

# **PUBLIC PETITIONS COMMITTEE**

Tuesday 23 April 2002  
(*Morning*)

Session 1

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# CONTENTS

Tuesday 23 April 2002

	Col.
<b>NEW PETITIONS</b> .....	1829
Cairngorms National Park Authority (PE481) .....	1829
Police Assaults (PE482) .....	1838
Judicial Appointments (PE485) .....	1849
Planning Legislation (PE484) .....	1856
Sex Offenders (Home Office Project) (PE486) .....	1857
Political Process (Young People) (PE487) .....	1859
Scottish Government (Accountability) (PE488) .....	1862
Afghan Prisoners (PE489) .....	1862
Paedophiles (Sentencing) (PE490) .....	1863
HMP Peterhead (PE494) .....	1864
<b>CURRENT PETITIONS</b> .....	1868
Peatland Conservation (PE301) .....	1868
Nuclear Disarmament (PE334 and PE364) .....	1868
Scottish Prison Service (Age Discrimination) (PE404) .....	1873
Green-belt Development (PE435) .....	1876
Film Industry (PE442) .....	1879
Scottish Local Authorities (Efficiency) (PE450) .....	1880
Greater Glasgow NHS Board (Consultation) (PE453) .....	1881
Scottish Ambulance Service (PE381) .....	1884
Scottish Agricultural College (Auchincruive) (PE480) .....	1884
<b>INADMISSIBLE PETITIONS</b> .....	1885
Victoria Hospital Kirkcaldy (IP23) .....	1885
State Hospital Carstairs (IP24) .....	1886

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## PUBLIC PETITIONS COMMITTEE

7<sup>th</sup> Meeting 2002, Session 1

### CONVENER

\*Mr John McAllion (Dundee East) (Lab)

### DEPUTY CONVENER

\*Helen Eadie (Dunfermline East) (Lab)

### COMMITTEE MEMBERS

\*Dorothy-Grace Elder (Glasgow) (SNP)

\*Dr Winnie Ewing (Highlands and Islands) (SNP)

\*Phil Gallie (South of Scotland) (Con)

Rhoda Grant (Highlands and Islands) (Lab)

John Farquhar Munro (Ross, Skye and Inverness West) (LD)

\*attended

### THE FOLLOWING ALSO ATTENDED :

Derek Cooney

James Duff

Robin Harper (Lothians) (Green)

Douglas Keil (Scottish Police Federation)

Bill McDermott (Cairngorms Campaign)

Jim McDonald (Scottish Police Federation)

Robert Maund (Cairngorms Campaign)

Raymond Pratt (Scottish Police Federation)

Bill Wright (Cairngorms Campaign)

**CLERK TO THE COMMITTEE**

Steve Farrell

**ASSISTANT CLERK**

Joanne Clinton

**LOCATION**

Committee Room 1

## Scottish Parliament

### Public Petitions Committee

*Tuesday 23 April 2002*

*(Morning)*

[THE CONVENER *opened the meeting at 10:01*]

**The Convener (Mr John McAllion):** Welcome to the seventh meeting this year of the Public Petitions Committee. We have received apologies from John Farquhar Munro and Rhoda Grant, both of whom are both attending a meeting of the Rural Development Committee in Fort William—obviously, they cannot be in two places at the same time. Winnie Ewing and Dorothy-Grace Elder are expected to arrive at any moment.

### New Petitions

#### Cairngorms National Park Authority (PE481)

**The Convener:** We begin with consideration of new petitions. The first petition to be considered is PE481, from Mr Bill Wright, on the powers of the Cairngorms national park authority. Mr Wright is here to speak to the petition, along with Mr Bill McDermott and Mr Robert Maund.

Mr Wright, you have three minutes in which to make a presentation. The floor will then be open to questions from members of the committee.

**Bill Wright (Cairngorms Campaign):** I am here this morning on behalf of the Cairngorms Campaign. I am joined by Bill McDermott and Robert Maund of the Scottish Council for National Parks. Formerly, Bill was deputy chief officer of the peak district national park; nowadays he is a shellfish farmer and Highland resident. Robert is the former director of planning for Strathclyde Regional Council. He is familiar with the circumstances under which the Loch Lomond and the Trossachs national park is being established.

Both the Cairngorms Campaign and the Scottish Council for National Parks very much welcome the planned establishment of the Cairngorms national park, which we understand will be Europe's largest national park by far. However, the planning provisions that Scottish Natural Heritage has proposed and that the Executive favours contain serious flaws.

First, it is likely that the current proposals will prepare ripe ground for disputes between local authorities and the proposed national park board.

Secondly—and ironically—the proposals will

make it more difficult for Scottish Executive ministers to resolve those disputes.

Thirdly, the proposals will disenfranchise those board members who are directly elected to the national park board, as compared with local authority appointees. As a result, people will be less inclined to stand for election to the board.

Fourthly, the proposals will create confusion among the public at large about where the responsibility for town and country planning lies.

Fifthly, the proposals fail to deal satisfactorily with contentious issues. From experience elsewhere in the UK, we know that local authority representatives may be tempted to vote tactically, so as not to offend other local authority representatives, instead of subordinating local political interests to those of the park authority.

Finally, the proposals fail to meet the criteria for world heritage site designation, as discussed during the members' business debate in the Parliament on 14 February.

The problem is that the proposed planning powers are to be held under a confused shared arrangement. Local authorities in the Cairngorms would largely retain the planning powers that they currently possess. That arrangement is pointedly different from the proposed arrangements for the Loch Lomond and the Trossachs national park, under which planning will be largely a national park function.

We draw these matters to the attention of the Public Petitions Committee because the procedures for consideration of the national park designation order allow only for adoption or rejection, rather than amendment, of the order. We believe that more detailed scrutiny of the order by the Parliament would improve the situation. We would be happy to appear before any relevant committee of the Parliament to contribute to its deliberations.

**The Convener:** Thank you.

Robin Harper is here in support of the petition. Before I open up the meeting to questions from committee members, I offer him the opportunity to speak.

**Robin Harper (Lothians) (Green):** I said everything that I wanted to say in the debate. My principal concern—I ask our witnesses to reflect on it—is the full implication if the Cairngorm area were to receive world heritage site status. What would be the implications for management if we go down the road that is currently suggested rather than the road that the witnesses are suggesting?

**Bill Wright:** I will answer, because I was present at the members' business debate when the situation with regard to world heritage site

designation was discussed. From the evidence from the International Union for the Conservation of Nature and Natural Resources—IUCN—it is clear that it would be unlikely that, without integrated planning powers, the Cairngorms would have any possibility of meeting the necessary criteria.

**Helen Eadie (Dunfermline East) (Lab):** Perhaps it would be helpful if you could explain to us the situation in the English national parks. Could you comment on that, given that you have had experience in the peaks area?

**Bill McDermott (Cairngorms Campaign):** I should say that I am talking about the experiences of English and Welsh national parks; the Welsh are proud of their national parks. There were 40 years of what many would say was rough justice for most of the national parks in England and Wales.

After the original legislation in 1949, two national parks were established in England with full board and multi-authority powers. Planning was included in those powers, and the parks got off to a good start.

As a consequence of changes of Government and other factors, and over a period of years, the rest of the national parks became what were called committee parks. Those committee parks were simply sub-committees of county councils. Some of them were joint committees, but in most cases it was single authority councils. Over those 40 years, it was widely recognised that the committee parks were not operating as intended by the original legislation. What was needed was that they should be independent and that they should have full planning control powers to take a full overview of all land use issues that are covered by the planning acts.

Not until the Environment Act 1995 did the Westminster Parliament give planning powers to all the rest of the national parks. We have therefore had a 40-year history of inconsequential management of most of the national parks in England and Wales. The parks are getting on with it now and are proud that they have moved forward. They are now the same as the two original national parks—the Lake District national park and the Peak District national park.

**Phil Gallie (South of Scotland) (Con):** It is unfortunate that our two members from the Highlands are not here today. Perhaps that is sod's law.

What level of expertise exists within the present parks board to make you think that you are capable of dealing with many of the complications of planning applications?

**Bill Wright:** Robert Maund could answer that

question, given that he was a director of planning in Strathclyde region and that he is familiar with the way in which the interim committee is operated in Loch Lomond and the Trossachs. There will be a new board with five directly elected members, 10 ministerially appointed members and 10 established councillors.

**Robert Maund (Cairngorms Campaign):** Before the national park was set up, and when I was working in Strathclyde, we had a joint committee between four local authorities, two districts and two regions. One of the difficulties was that, although the relationship at the joint committee level was good, when it came to implementation, the district councils retained planning powers. Most of the judgments that had to be made were local concerns at that stage. The boundary at Loch Lomond went straight up the middle of the loch, and nothing could be done about the fact that the agreed policy was implemented on one side of the loch but not on the other. Such a situation would be extremely worrying in the context of future national parks.

The new organisation has a mix of elected members and people who represent wider, national interests and there is every reason to expect that it will be competent and will deal with such situations. The issue is whether the administrative arrangements will allow the organisation the opportunity to do that. If there is confusion, or if the organisation cannot bring together an integrated approach—with consistent decision making against a background of criteria that have been agreed as part of preparing the plan—it will not be effective. We must ensure that the plans do not simply become bits of paper that sit on the shelf; they must be effective and shape the way in which the area is managed in the future.

**Phil Gallie:** You still have not really answered my question about levels of expertise. You suggest that there is likely to be confusion and that different policies will operate in the area unless the plans all come under one authority. However, the ultimate authority is the Scottish Executive, which sets planning guidelines that must be observed. Will there be evident expertise in the park authority, in order to ensure that the organisation sticks to those guidelines?

**Robert Maund:** I have no reason to believe otherwise. Organisations throughout Scotland are made up of elected members or a combination of elected and appointed members, who bring a great deal of competence and commitment to those organisations. There is absolutely no reason why that should not be the case with the national park authority.

**Phil Gallie:** Excuse my ignorance, but are you saying that if an individual wanted to adapt an old

farm or a derelict building, both the planning and the building warrant aspects of that individual's application would be controlled by the park authority?

**Robert Maund:** We are concerned about planning, land use, preparation of the plan and development control powers. We want the park authority to have those powers, as was agreed for Loch Lomond and the Trossachs.

**The Convener:** You have referred several times to the fact that five members of the board will be elected. How will they be elected and by whom?

**Bill Wright:** Under the National Parks (Scotland) Act 2000, they will be directly elected by residents within whatever the national park boundary is to be. Anyone who is resident within the national park boundary will be able to vote for those five members. The precise details of the election procedure have yet to be determined.

**The Convener:** You also referred to the fact that the Loch Lomond and the Trossachs national park has full planning powers. When was the park given those powers?

**Bill Wright:** The designation order for Loch Lomond and the Trossachs has not been completed yet. Robert Maund probably backs that view. However, the order, which has been put out for public consultation, includes those powers.

**The Convener:** The Executive is recommending full planning powers for one national park, but not for another.

**Bill Wright:** That is correct.

**The Convener:** Is there any rationale for that difference?

**Bill Wright:** We do not believe so.

**Robert Maund:** That is an important issue. We believe that the correct judgment was made about the Loch Lomond and the Trossachs national park, but there does not seem to be any rational reason why the Cairngorms should be treated differently. There are five local authorities in the Cairngorms and getting them to pursue exactly the same, consistent path will be complex.

10:15

**The Convener:** What are the views of the five local authorities?

**Bill Wright:** They take the opposite view to us. That is understandable, because planning powers are a key function of local government these days. However, international convention is that integrated management of planning generally takes place in national parks.

**The Convener:** It has been suggested to me

that that is the same situation as in Loch Lomond and the Trossachs—there will be local authorities in those areas that do not want to give up their planning powers. What is the difference?

**Bill Wright:** In Loch Lomond and the Trossachs, by and large, the local authorities have favoured the arrangement.

**The Convener:** Are you saying that the Cairngorms will not get world heritage status unless you have the full planning powers?

**Bill Wright:** We cannot guarantee world heritage status, because the criteria have been tightened up. The case for world heritage site designation has been pursued by the UK Government since 1981—particularly in 1990 by Lord James Douglas-Hamilton when he was a Scottish Office minister. It is clear from the advice in letters from the IUCN, which acts as the arbiter, that there is no possibility of such a designation without full planning powers.

**The Convener:** I want to get this clear. Around what issues would the kind of conflicts that you mention between local authorities and the board revolve? Are we talking about economic exploitation of the Cairngorms, tourism development and so on? Are those the areas of potential conflict?

**Bill McDermott:** Yes. In the initial phase of the legislation, Sam Galbraith talked about finding a new way of doing things. He was really talking about rural sustainable development. The national park authority will have to find new ways of socioeconomic development that conserve the natural and cultural heritage. That is its duty. We are moving into a completely different paradigm for economic development in national parks, and leaving the old ways behind. It is no longer a case of jobs at all costs; it is about finding new ways of creating rural jobs.

**Dorothy-Grace Elder (Glasgow) (SNP):** What new ways of creating rural jobs would you approve of and promote? Is there serious concern about the extension of winter sports—ski lifts and so on?

**Bill Wright:** There is a sore and painful history of the development of winter sports in the Cairngorms, with which I am sure the committee is familiar. All three ski centres are virtually on the boundaries of local authorities—Glenshee is on the boundary of Perth and Kinross and Aberdeenshire, the Lecht is on the boundary of Moray and Aberdeenshire and Cairngorm itself runs adjacent to the boundaries of Moray and Aberdeenshire. Both Moray Council and Aberdeenshire Council objected to the funicular railway development.

We are in the hands of crystal ball gazing in relation to ski development in Scotland because of

the consistency of snow conditions. In 30 years' time, because of climate change, there might be no ski industry in Scotland. It has been proven that the ski industry in Scotland is fairly marginal in terms of year-round tourism development. However, there are many other outdoor activities, such as Munro bagging, walking and climbing in the hills, which take place throughout the year. That is proving to be financially beneficial to remote rural communities.

**Dorothy-Grace Elder:** Would you approve of those activities above the extension of skiing activities?

**Bill Wright:** We regard them as much more sustainable.

**Bill McDermott:** Highlands and Islands Enterprise did a study of the income to the Highlands through walking and mountaineering and concluded that more than £50 million could be attributed to such activities. The foot-and-mouth outbreak means that everyone realises the importance of access to the countryside.

**Dr Winnie Ewing (Highlands and Islands) (SNP):** I am sorry that I am late in arriving. I had to queue for half an hour for a taxi at Edinburgh airport, after spending half an hour in the air from Inverness.

**The Convener:** Perhaps we should get a petition on that.

**Dr Ewing:** We should. I would speak to it.

**Robin Harper:** I want to pursue what Dorothy-Grace Elder was saying. Surely the issue is not so much your opinion of what should be happening as your opinion of the way in which it should be managed. Irrespective of your views on the development of skiing, it is clear that there are an extraordinary number of areas of conflict between three or four councils over the same sport, let alone all the other things that are going on in the Cairngorms. Do you agree with that?

**Bill Wright:** Our greatest fear is not about skiing development or the bulldozing of tracks on traditionally managed Highland estates in the core area. Our greatest concerns are about inconsistencies in housing development, such as the development of second homes. That is already an issue in Loch Lomond and the Trossachs, in Badenoch and Strathspey and—Bill McDermott will be aware of this—in the peak district.

**Helen Eadie:** One of the issues for local people living in that part of Scotland might be accountability. Many of us throughout Scotland have views about the accountability of quangos and elected organisations. In this instance, the issue is getting a balance between the two. There is a move throughout Scotland to encourage more directly elected representation. However, you are

suggesting a move away from that. I invite you to comment on that.

**Robert Maund:** The Parliament, in its wisdom, decided that there would be a majority of elected members on the national park authorities. The intention was to ensure accountability. If the park authority was the planning authority, its decisions would be made locally. I am not familiar with the arrangements in the Highland region. However, if, for example, a planning application was to be dealt with by the main Highland Council planning committee, the deliberations could be carried out by people from a wide area, not as locally as would be the case for the national park.

**Dr Ewing:** In the supplementary information to the petition, we are told:

"In both the case of Loch Lomond & Trossachs and Cairngorms National Park Authority it was recommended ... that five of the Board members will be directly elected."

Five out of what total?

**Bill Wright:** We are in the hands of the National Parks (Scotland) Act 2000 in respect of the proportions. Scottish Natural Heritage's proposal is for five out of 25 board members to be directly elected.

**The Convener:** Those 25 also include 10 elected councillors from the local authority.

**Bill Wright:** In addition, yes.

**The Convener:** So, 15 members of the 25 will be elected.

**Bill Wright:** Yes. Indeed, there is nothing to prevent the board members who are appointed by ministers from being councillors. That has happened occasionally south of the border.

**The Convener:** Would the normal planning law apply? Could any developer who was refused planning consent appeal to the ministers?

**Bill Wright:** That is one of the problems with the proposal that has been set out. Scottish Natural Heritage's officials advised its board that, under the proposed arrangements, more applications were likely to end up on the desks of ministers if the national park board did not have full planning powers. Appeals would be against local authority decisions if the decisions were left with the local authority alone.

**Dr Ewing:** Why are higher powers being offered to Loch Lomond and the Trossachs national park?

**Bill McDermott:** The powers that are being offered to Loch Lomond and the Trossachs national park are the powers that all national parks in England and Wales have. I think that Dr Ewing was not present when we spoke about that earlier. There were 40 years during which those powers were not available to all the national parks



in England. Loch Lomond and the Trossachs will follow the example of England and Wales and the rest of Europe. The Cairngorms national park will be different; the difficulty is that we do not know why.

**Dr Ewing:** No one knows the answer to the fundamental question.

**Bill Wright:** That is the question that we want MSPs to put to the Executive and to SNH.

**The Convener:** I presume that ministers know the answer. Do the witnesses know when the designation order for the Cairngorms national park will come before—or is expected to come before—the Rural Development Committee?

**Bill Wright:** The designation order for the Cairngorms national park has not been published. We approached the Public Petitions Committee with the hope that the Executive will pay heed to today's discussions. Robert Maund knows about the designation order for the Loch Lomond and the Trossachs national park.

**Robert Maund:** The Loch Lomond and the Trossachs national park should become operative on 1 April 2003.

**The Convener:** That is a year from now.

**Bill Wright:** It is much more advanced.

**The Convener:** I thank the witnesses for their evidence, which has been informative for the members of this committee who are not on the Rural Development Committee. We have discovered a lot. The witnesses are welcome to stay and listen to the debate on the petition.

We must decide between two suggested actions. The first is that the committee writes to the Executive to seek its formal views on the petition and to ask about the time scale for the consideration of SNH's "Report on the proposal for a National Park in the Cairngorms". We should ask specifically why the Loch Lomond and the Trossachs national park should be given planning authority status when the Cairngorms national park will not be given that status. Finally, we should pass a copy of the petition to the Rural Development Committee.

Alternatively, we could refer the petition to the Executive for consideration during its examination of the SNH report and request that the committee and the petitioner be kept informed of developments.

**Dr Ewing:** I prefer the first option. I have always supported the idea that we should have elections rather than unelected quangos, so I read the material on the petition with less sympathy than I have developed since hearing the arguments about the number of members of the national park authority who will be elected. The arguments have

swayed me a bit. We should go for the first option, which is more aggressive.

**The Convener:** The first option would mean that the committee would remain in charge of the petition. If we pass the petition to the Executive, it will pass out of our control. Should we write to the Executive to seek clarification on the issues?

**Phil Gallie:** I would like a clear explanation for the difference in approaches.

**The Convener:** Yes. That is the key. We must know why the Executive takes a different approach to the two national parks.

**Dr Ewing:** In the letter to the Executive, could we make the point that influenced me about the proportion of elected members of the authority? Although it has been said that only five members will be elected directly, as the convener pointed out, there will be a further 10 elected representatives. Fifteen out of 25 members will be elected. It is possible that there could be more elected members because of ministers' discretion.

**The Convener:** It appears that that matter is dealt with in the National Parks (Scotland) Act 2000, but we could ask the Executive for its views on whether the 10 members that it will nominate are likely to include elected people. The Executive can nominate more councillors for the board.

10:30

**Robin Harper:** I think that I know the answer to this, but is the first option to keep charge of the petition, to wait for a response from the Executive and subsequently to recommend that the matter be passed to the Rural Development Committee or the Transport and the Environment Committee?

**The Convener:** Yes. Do members agree to take the first option?

**Members indicated agreement.**

## Police Assaults (PE482)

**The Convener:** The second new petition is from Mr Douglas J Keil, on compulsory blood testing of suspects. Mr Keil, who appears on behalf of the Scottish Police Federation, will make a brief presentation. He has with him Jim McDonald and Raymond Pratt. Mr Keil has three minutes to make a presentation and then members will ask questions.

**Douglas Keil (Scottish Police Federation):** Mr Jim McDonald is the research officer for the Scottish Police Federation and Mr Raymond Pratt is a police officer from Strathclyde.

I thank the convener and members of the committee for the opportunity to make a brief oral statement in support of our petition. The statement

will be brief, as the petition and the supporting material outline the problem and what we seek.

The problem was first brought to the federation's attention by Raymond Pratt, whose circumstances are related in case 2 in the appendix to the petition. When he and others persuaded the federation to take up the issue, I asked Jim McDonald to examine it further. We were surprised to discover the extent of the problem and the number of officers who are exposed to such risks and trauma each year. We were also surprised and shocked at the serious impact of such incidents on the working lives and private lives of officers and on the lives of their families.

The petition refers to police officers, as we have statutory responsibility for them, but the Parliament could extend the protection and provisions that we seek to the medical profession and to any other group or victim. Scotland's people rely on the police to protect them. Policemen and policewomen have a difficult and often dangerous job. No matter how difficult or dangerous that job is, they do not have the option of saying no or standing back and letting someone else get on with the job, as there is no one else. They must deal with drug-crazed maniacs or knife-wielding assailants. Regardless of the circumstances, they must protect the public and, in return, Scotland's police look to the people, through the Scottish Parliament, to protect them.

The two requests that are made in the petition are reasonable and proportionate. Unfortunately, exposure cannot be prevented, but the measures that we seek could prevent officers from undergoing unnecessary and unpleasant treatment and prevent stress and anxiety to officers and their families. I know that the committee will give serious consideration to the petition and I hope that that consideration will be favourable. I will try to answer the committee's questions.

**The Convener:** On behalf of the committee, I thank you for the material that you have made available to members. I did not appreciate the terrible dangers that police officers and other members of the public services face in dealing with such difficult individuals.

**Phil Gallie:** Mr Keil said that the police are there to protect the public and that the public have a responsibility through the Parliament to those who enforce the law. I fully accept that. The dangers to policemen change daily. Is it true that some people use their medical conditions as a weapon against being arrested or in resisting arrest, as some of your examples seem to suggest?

**Douglas Keil:** Unfortunately, I think that that is the case. Often, a threat is used in the hope that that will prevent arrest, but police officers do not

operate on that basis. Regardless of the circumstances, they have no option but to go and deal with such people. Every incident is by no means the result of people wittingly being determined to infect officers. Circumstances can be accidental—for example, a police officer might have to deal with a victim of a road accident. Subsequently, it might be learned that the victim carried an infectious disease and that the policeman has been exposed to that risk. There can be risks in many incidents and on any day of the year.

**Phil Gallie:** One of the cases that is highlighted involved a policeman having to undergo medical attention on the basis that there may have been contamination. The treatment seemed to have had a serious effect on that individual's life and may have been far more harmful than the consequences of the contact would have been.

**Douglas Keil:** The medical advice is that, wherever there is a risk, treatment should be undergone. It is extremely unpleasant treatment. It can cause the officer involved to be physically unwell for weeks or months. It would be a huge gamble for an officer who had been exposed to the risk of contamination, no matter how small, to decide not to take the treatment. There is no option. Such an officer has to go through the treatment.

The benefit of compelling suspects to take tests, as the petition requests, is that if a test proved negative, the short period of time that it would take to obtain that result would give an officer an early indication that the person was not carrying an infectious disease. That would save an awful lot of stress and trauma—it would not stop the risk of exposure, but it would stop the terrible consequences of that risk.

**Phil Gallie:** Other members probably have many questions on the issue, so I will make one more comment before I hand over. Prison officers and nurses must come across the same situation. Does the call for such testing extend beyond the police? Are prison officers, for example, protected in that medical checks are made on individuals who are going into prison so their circumstances are known? Is there a similar situation with nurses?

**Douglas Keil:** I do not know what other professions have done about the matter in Scotland. We have started to examine what has been done throughout the world. Australia and Canada have drawn up legislation that covers all emergency workers and, indeed, any victim who is exposed to risk. I do not know if anybody else has made a similar request in this country, but in the petition we acknowledge that many other groups could benefit.

**Dr Ewing:** You have opinion from counsel on the Human Rights Act 1998. Is there any doubt about that opinion or has it been consolidated? Is it the opinion of one member of the bar? Do you have good, solid support?

**Douglas Keil:** It is the opinion of one member of the bar, but we would like to think that he gave us a quality opinion. He deals with article 3 of the European convention on human rights, which states:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

He does not think that that would be a realistic defence against our proposal. He also deals with article 5. However, we have not gone beyond seeking an opinion from one person.

**Dr Ewing:** It sounds quite good, actually. There are precedents in our criminal law in which a refusal can be regarded critically from an evidential point of view. As there are precedents, should a refusal to submit to a test be regarded as critical evidentially in the courts?

**Douglas Keil:** Yes. That is part of the petition.

**Dr Ewing:** You are requesting that.

The insurance industry does not come out of the matter with great honour—for instance, if an officer has had to be tested, that seems to have implications in regard to mortgages. Has your research department contacted the insurance companies to suggest that they behave in a more responsible way?

**Douglas Keil:** I can say with some certainty that we have not done that. It is almost a standard question on an application for insurance and most other commercial contract arrangements. Raymond Pratt might say something about that, as he has experienced it.

**Raymond Pratt (Scottish Police Federation):** I had taken out an insurance policy two days before I was attacked. The insurance policy was to take effect seven days after I was attacked. In the insurance application form, I was asked whether I had submitted to an HIV test. When I filled out the form, I had not, but two days later I had. I was left with the dilemma of whether I should disclose that information to the insurance company and face the consequences of the disclosure. I was advised that, at the time that I submitted the form, I had not submitted to a test, so the form had been completed correctly and there was no necessity for me to divulge a subsequent test to the insurance company.

**Dr Ewing:** Surely your research department realises that, although insurance companies have a right to ask that perfectly reasonable question for commercial reasons, when they are dealing with

police officers, who protect the public, they should treat them more considerately, as it is not a purely commercial question. It seems to me that the insurance company should be tackled on those questions.

**Jim McDonald (Scottish Police Federation):** I have spoken informally to people in the insurance industry. Their point of view is that even though a condition may have been acquired innocently, the economic risk to the insurance industry is the same. They are not willing to take a more sympathetic view simply because it is police officers who have fallen victim to an assault in the course of their duty.

**Dr Ewing:** Even when the tests are negative?

**Jim McDonald:** If a member of the public went to an insurance company and clarified the situation, they might get a more sympathetic hearing, but most of the assessment processes that major companies have are computerised. It is a tick-box situation, but it is open to anyone, including policemen, to explain what has happened if a result is negative.

**Dorothy-Grace Elder:** We are all shocked, because some of us had no idea that tests were not compulsory. We are also shocked by the degree of manipulation that can be used against the police. In an age of contaminated blood and saliva—to a degree that we have never had before—does spitting on the police or exposing them to blood constitute using blood and saliva as weapons against the police? If so, surely it would be fair to both sides—the police and even the wretched accused—to have compulsory blood testing, because it would show whether or not the threat was serious. Have you explored that angle?

**Douglas Keil:** We support that view. If there was evidence that the person acted knowingly, their behaviour would aggravate the assault charge, but we are looking at how we can get some form of protection for police officers. What Dorothy-Grace Elder says is absolutely true.

**Jim McDonald:** There are difficulties. You are right that in many instances, attacks with blood or saliva—in particular deliberate ones—are at least as dangerous and possibly more dangerous to a policeman and his family than are other attacks. Fiscals face difficulties in prosecuting such attacks, because the evidence that can determine the seriousness of an assertion in such circumstances can only be supplied by the accused person.

In theory, fiscals can apply to the courts for a warrant to obtain samples and information, but that is almost never done. In fact, I do not know of an occasion on which it has been done. That is largely to do with the approach of medical practitioners, who are unwilling to take blood by

force if a person will not submit willingly to a blood test. In Canada in particular, warrants are applied for frequently and blood samples can be obtained by force, but that is not a road that the medical profession in this country would be happy to go down.

**Dorothy-Grace Elder:** You are saying that fiscals have the power now to compel someone to submit quickly to a blood test, but that they are not exercising that power, although they know the dangers of this age.

**Jim McDonald:** That is right, but it must be kept in perspective. My appreciation of the problem is that a fiscal would have to apply to the court for a warrant to obtain blood. There are processes that have to be followed. Obviously, the accused would have a voice, and a right to be represented, but it would be a long and difficult process. By the time all that had been gone through, the benefit would be lost.

**Dorothy-Grace Elder:** So weeks or months could have passed.

**Jim McDonald:** In theory, yes.

10:45

**Dorothy-Grace Elder:** I refer you to the case examples that you provided. Case 4 indicates the extreme degree of cruelty that sometimes is used by people against the police. Case 4 was a case from Glasgow, where a police officer arrested a man for assaulting his girlfriend, and the man spat in the policeman's mouth. In relation to that case, you state:

"The accused agreed to give a blood sample but not to the results being made known to the police officer concerned or to any third party."

That is abysmal cruelty. The accused agreed to go ahead with a blood sample, but still would not agree to the results of the test being made known. The accused has to agree that the results be made known to his victim, the police officer.

**Raymond Pratt:** When I was assaulted, the heroin addict concerned used the phrase "I hope you die" as a means of reinforcing what he had done. On that occasion, I was told that it was easier for me to submit to a test and then wait for three months than for the suspect to be tested.

**Dorothy-Grace Elder:** That was because of the legal situation, rather than any medical or physical situation.

**Raymond Pratt:** That is correct. Legally, it was easier for me to obtain a test and wait three months to undergo another test than to test the suspect. That seems ludicrous in my opinion, because it led to my wife losing a baby. My wife could not understand either how someone could

do such a thing to someone deliberately and not agree to undergo a test.

**Dorothy-Grace Elder:** You are the police officer mentioned in the document, whose wife lost the baby.

**Raymond Pratt:** Yes. We wondered why the suspect could not submit to a test. We had to wait three months before I could obtain the second of the two tests. It would have been far easier to test the suspect at the time.

**Dorothy-Grace Elder:** How many children did you have then?

**Raymond Pratt:** Two.

**Dorothy-Grace Elder:** And your wife deliberately ended the pregnancy because of her terror about HIV.

**Raymond Pratt:** Yes. She could not understand the process. I had been assaulted on many occasions as a police officer, but that was the first time that it had a direct effect on my family and on my life outwith the police service. My wife could not understand why the person concerned was putting us through three months of anguish.

**Dorothy-Grace Elder:** She had another three months of her pregnancy to go, and simply could not bear the terrible distress.

**Raymond Pratt:** The stress proved too much for her.

**Dorothy-Grace Elder:** So policemen's and policewomen's families are being denied human rights as well.

**Raymond Pratt:** Yes.

**Helen Eadie:** Is there some correlation between the testing that we have been discussing and breath testing for alcohol? The public have to submit to alcohol breath tests in the interests of the wider human race. Can the same argument or parallels be drawn in the context of human rights legislation? We accept breath testing. We know that it is a good thing and we know why we do it. Could a parallel be drawn in this case?

**Douglas Keil:** We like to think so. That relates to the point that Dr Ewing made. There are areas of the law, such as the example of breath testing for alcohol that you mentioned, where refusal to submit to a test leads to an offence. We believe that that should be true in this case. It should be a matter of trying to compel the person to submit to a test. The hope is that that could be the result of this petition.

**The Convener:** The petition has come from the federation's membership, but what about the chief constables and police authorities? Do they have a view about this?

**Douglas Keil:** Some time ago we contacted the Association of Chief Police Officers in Scotland and the Association of Scottish Police Superintendents, saying that we were embarking on this process. It is fair to say that they were reasonably supportive. I know for a fact that the ASPS is absolutely behind the petition, about which it has an article in its most recent members' magazine. Ultimately, however, we decided to pursue the matter ourselves.

**The Convener:** Has the matter been raised with the elected police authorities?

**Douglas Keil:** To my knowledge, we have not raised it with the police authorities.

**The Convener:** Has there been any reaction to your petition from civil liberties bodies?

**Douglas Keil:** I sent a copy of the petition to Liberty, but I do not think that we got a response. I am sure that once the petition gets some publicity, such bodies will take an interest. We can understand that reaction. What we think is important is the appropriateness and the proportionality of the issue, and we believe that that falls on our side.

**Phil Gallie:** I will ignore the human rights argument, as sometimes that can err in the wrong direction, but that is another point. The petition deals with two issues. Dorothy-Grace Elder identified one, concerning the need to process the samples quickly. A problem that arises from that relates to victims of a motor car accident, an example that was mentioned earlier. It is one thing to talk about the rights of a criminal; it is quite another to talk about the rights of an innocent victim. The second issue relates to your call for the Data Protection Act 1998 to be amended to allow the results of tests to be retained in the national police computer. I suspect that that is a UK matter and that, by trying to deal with it, the result that I think we all want will be delayed. It might be more useful to divorce that element at this point.

**The Convener:** The clerk has advised me that we can ask the Executive to respond on that issue. The Executive would have to speak to the UK Government, but that would not prevent the petition from being considered.

**Dorothy-Grace Elder:** I think that, although the Data Protection Act 1998 is a UK act, Helen Liddell deals with it in Scotland.

**The Convener:** The Executive could consult the appropriate authorities.

**Jim McDonald:** There is a chance that the Data Protection Act 1998 will not be a major issue. At the moment, we can retain information on the Scottish Criminal Records Office computer and the police's national computer in relation to HIV and contagious diseases, but only with the permission

of the person concerned. If legislation were passed and we could hold that information, the issue of the 1998 act would not be important. I am not sure of the legal position.

**The Convener:** We can seek clarification on that issue. I thank you for your testimony this morning. You are free to sit and listen to the discussion about what to do with the petition.

The suggested action is that we take up the matter with the Executive to seek its views and to ask it whether, along with the UK Government, it has any plans to examine the feasibility of introducing any of the measures proposed by the petitioners or whether it has alternative proposals for addressing the concerns of police officers about the risk of infection.

**Dr Ewing:** Can we leave out the part about consulting the UK Government, apart from in relation to the Data Protection Act 1998? I do not think that we have to consult Westminster to change Scottish criminal law.

In our letter to the Executive, can we point out that, as Helen Eadie said, the acceptance of the need for breath tests sets a sort of precedent? We should accept the need for HIV and hepatitis C tests in certain circumstances. The law might need to be altered—it is a nice subject for a member's bill—and there would be no harm in asking the Executive to consider the matter thoroughly. There is a precedent for an accused person's refusing a test having an adverse effect on their rights in court and that should be considered carefully. It seems that there would be no problem in relation to human rights issues.

The insurance companies seem to be getting away with quite high-handed behaviour. They should distinguish between people who are putting their lives at risk and the general public. We might do well to write to the head of the Scottish section of the Association of British Insurers or a similar body to ask what they have to say about the petition.

**Helen Eadie:** I seek the committee's view on the wider issue. It has been pointed out this morning that members of other front-line professions—the ambulance service, for example—might come into the scope of the legislation that we are discussing. I endorse the suggestion that we write to the Executive to ask for its views. However, we should bear in mind the other professionals who may equally be victims. I am most concerned by what I have learned this morning and I have every sympathy with the petitioners. We ought to address this issue and I hope that the Scottish Executive feels the same way.

**Dorothy-Grace Elder:** I am sitting here boiling with rage and you will not see my feet for dust as I get over to the bills office to see what we can do about this.

We could ask the Executive about one angle that has not been explored. In hospitals, if a drug addict is taken in, all sorts of tests will be done and the staff will know whether they are at risk. Hospital staff have that advantage, but professionals in the other emergency services do not. Hospital staff do not seem to be hindered by any legal considerations.

**Phil Gallie:** Does a problem arise over patient confidentiality in hospitals? I wonder, too, whether we need to go dashing off to the bills office because it may be—although I am not sure—that the issue can be dealt with by statutory instrument.

**Dr Ewing:** I doubt it.

**The Convener:** I have been involved with members' bills. People at the non-Executive bills unit have informed me that any member who introduces a member's bill now will not get it through before the end of the session.

**Dorothy-Grace Elder:** Well, tough—somebody else can take it on.

**The Convener:** The reason is simply that a list of members' bills is already in the pipeline.

**Dorothy-Grace Elder:** Some of them are on pretty frail stuff compared with this subject.

**Dr Ewing:** Is this a Parliament or is it not a Parliament? Is it staffed or is it not staffed?

**The Convener:** It is. The point is that any member's bill has to go out to consultation. Given that less than a year of the session remains, no member's bill has a realistic chance of making it on to the statute book.

**Dr Ewing:** Well now we know.

**Dorothy-Grace Elder:** I love being up against unrealistic chances.

**The Convener:** However, preparatory work could be done.

**Phil Gallie:** There is a sense of urgency and the problem has been around for a while. Many incidents have been reported and I am sure that many more have gone unreported. Every committee member has spoken of the sense of urgency and I would like that to be communicated to the Executive. We should ask whether a statutory instrument could be used. That would bring about a quick solution. However, if that is not possible, the Executive could perhaps find time for a short but effective bill.

**The Convener:** I will try to go through all the suggestions that have been made. When we write to the Scottish Executive to ask it to respond to the petition and to outline any action that it intends to take, we should also ask it to consult the UK Government separately about the Data Protection Act 1998. We should point out to the Scottish

Executive the precedent of the breath test and how that could be relevant in the circumstances that the petition refers to. We should also refer to other precedents, where a refusal to take a test has affected an accused person's rights in court. In a separate letter to the Association of British Insurers, we should ask about the problem—in relation not only to police officers but to other front-line professionals in the emergency services who find themselves in such a position. Indeed, in our letter to the Executive, we should ask it to consider those other professionals. We should also raise the issues of human rights and patient confidentiality in the national health service.

I suggest that we also write to the bodies who represent civil liberties interests in Scotland. We should consider any criticisms that they may make. They will become involved at some point so it would be better to get them involved right at the beginning.

11:00

**Phil Gallie:** You have missed out querying whether a statutory instrument could be used and you have missed out emphasising the urgency of the matter.

**The Convener:** Yes—I am sorry. We will ask the Executive whether changes could be implemented by statutory instrument or by any other legislative means and whether it proposes to do anything of that kind.

**Dorothy-Grace Elder:** Convener, I am sure that you will stress that the Executive must respond urgently to your first tranche of questions. Like other members, I do not want the data protection element to slow down the Executive's reply for many months.

**The Convener:** We want the Executive to respond to the issues for which it is responsible separately, while it consults the UK Government on issues for which the Government is responsible. Although insurance companies are a reserved matter, that should not prevent us from asking about a petition that has been submitted to the Scottish Parliament.

**Dorothy-Grace Elder:** Perhaps that question could be lobbed in with our questions on data protection.

**The Convener:** We will write to the Association of British Insurers separately.

**Dr Ewing:** It is the association's behaviour in Scotland that we are interested in.

**The Convener:** It is fair to ask for the association's reaction to the petition, because it has been submitted to the Parliament and raises concerns. Do members agree with the proposed course of action?

**Members indicated agreement.**

### **Judicial Appointments (PE485)**

**The Convener:** Petition PE485, in the name of Mr James Duff, is on judicial appointments. Mr Duff, who is accompanied by Mr Derek Cooney, will make a brief presentation to the committee in support of the petition.

**James Duff:** My petition concerns the appointment of Mr Kenneth Ross as resident sheriff at Dumfries and Galloway sheriff court. The area was his main place of business as a solicitor for 20 years and the Sheriff Courts (Scotland) Act 1971 makes it clear that, in such a case, a sheriff has no title to sit or to be appointed resident sheriff. There must be a conflict of interest here.

I refer the committee to the second edition of McPhail's "Sheriff Court Practice", which states:

"Declinature on the ground of relationship is based on the declinature acts of 1594 and 1681 ... The declinature may be proponed at any stage of the case, and the effect of the rule is that all prior proceedings before the sheriff are a nullity and his interlocutors are recalled."

McPhail goes on to say:

"It is submitted that the consideration that the administration of justice should reasonably appear to be disinterested would now adays lead to the conclusion that in such cases the sheriff should not sit, unless"

with the

"consent of parties to adjudicate on matters entirely incidental to the merits of the cause."

Kenneth Ross refuses to decline jurisdiction or to declare his interest with former clients who appear before him. He recently granted a decree against one of his former clients, Derek Cooney, which is now subject to a Court of Session action taken by Mr Cooney and approved by senior judges.

I refer the committee to the ruling made by the Lord Justice Clerk Ross, Lord Dunpark and Lord McDonald on 17 June 1988 on the case of Harper of Oban (Engineering) Ltd v Henderson in the High Court of Justiciary. The ruling stated:

"This is a bill of suspension at the instance of the complainers who pled guilty in the district court at Oban to a number of contraventions of the Road Traffic Act 1972 and the Transport Act 1968. Fines totalling £400 were imposed on them by a justice sitting in the district court. The bill of suspension explains that it is being taken because the particular justice was a former employee of the complainers".

I also refer in this respect to the case of Bradford v McLeod.

Similar situations will occur at Dumfries and Galloway sheriff court because Kenneth Ross had many clients when he practised as a court solicitor for McGowan's. Although Scottish ministers may

direct a sheriff to act in another sheriffdom, that will not help Mr Ross's credibility in sitting as a sheriff and judging the public anywhere else. To prevent publication of this matter, on 21 April 2002 the Executive told a newspaper that this petition would get nowhere.

The Kenneth Ross matter would not have arisen if the Law Society of Scotland had investigated complaints against Mr Ross dating from 1977 to the late 1990s. The investigations were sidetracked—that is the opinion of the lay observer in May 1984 and July 1991. This petition could have been avoided if the Scottish Executive had taken up the complaints that Mr Cooney and I made that Mr Ross should not sit as the resident sheriff at Dumfries and Galloway court. It is incompetent for the Executive to say that it cannot remit in individual cases, when that is a matter for rules of court and there is more than one complaint.

The present resident sheriff at Dumfries and Galloway court—Barr—was aware of Mr Ross's conduct as a practising solicitor regarding my case and that of Mr Cooney, but failed to address his opinion on Mr Ross's appointment as a sheriff principal.

**The Convener:** Thank you.

Before I open the meeting up to questions from committee members, I make it clear that the Public Petitions Committee cannot comment on or intervene in a specific judicial appointment, such as the one to which you refer. We can, however, deal with the more general issue that the petition raises. That is the appointment of a sheriff to a court where he has practised for 20 years or so and where a clear conflict of interest exists for the sheriff in dealing with former clients who may appear in the court before him.

**James Duff:** There must be a lot of other complaints from members of the public in Dumfries and Galloway regarding Mr Ross's conduct.

**The Convener:** You have to remember that the Public Petitions Committee has limited powers and that we cannot interfere in individual appointments. We can deal only with the general issues.

**James Duff:** I know of someone who is going to the Court of Session following today's committee meeting and who is to refer to Mr Ross's conduct over a period of 17 years. The matter is serious.

**The Convener:** I accept that. However, you will have to accept that there are limitations on the Public Petitions Committee. I repeat that we can deal only with the general issues about the method of sheriff appointments, not with individual cases.

**Dr Ewing:** We cannot have anything to do with the things that have been said about Mr Ross's alleged defaults in cases. Those are nothing to do with us. Other bodies deal with issues such as that.

What is of interest to me is that a judicial appointments board is proposed. That would introduce a totally new system of appointments—the sooner the better. Everyone would be happy if we were to have a proper judicial appointments board, given that we have had problems with the Human Rights Act 1998 and the independence of sheriffs.

I want to check the general principle behind Mr Duff's petition. Are you saying that, if a solicitor has practised in a sheriffdom, ipso facto he should not be appointed to sit on the bench in that sheriffdom? It may not be possible to sustain that argument in all cases, but it would be easy to sustain it if there were a number of complaints against the individual.

We could also ask whether people want to have sheriffs sitting on the bench who do not know how the court works in detail and who do not have local knowledge. I practised in the criminal courts in Glasgow sheriffdom for half my life. I did not like it when a beardless boy from Edinburgh was on the bench, as he would not know simple things such as that certain parts of Glasgow did not have telephones and he might ask why someone did not telephone the police.

The argument has two sides. The law allows for someone to object to a sheriff because of a conflict of interest. It is not necessary to disqualify someone who has practised. From time to time, someone will object and the objection is granted immediately. If the sheriff has to judge a previous client, that would be a case in which someone could say—

**The Convener:** We are at the questions stage.

**Dr Ewing:** Yes. However, Mr Duff is ignoring the fact that the alternative to someone with experience is someone with no experience.

**James Duff:** I am sure that there are plenty of competent lawyers throughout Scotland who could be appointed as sheriffs and who have a great deal of experience, but in Dumfries and Galloway Mr Ross has a conflict of interest. Over a 20-year period, he has had thousands of clients. I know that many of his clients have grievances against him. That is why he left Dumfries in the first instance. He had to obtain a house outside Dumfries because of the demonstrations.

**Dorothy-Grace Elder:** I hate to disagree with my distinguished and knowledgeable colleague Dr Winnie Ewing on this issue, but I think that the appointment of a sheriff who has worked in a court

for many years leads to an old boys and old girls system. For many years, that sheriff has been working in a small pool with the local fiscals and other solicitors. It could be argued that they will be subject to influence, regardless of who they are. I am concerned by the sheer cosiness of it all. One big danger that we face in Scotland is not outright corruption, but cosy corruption—palsy-walsy stuff in a small pool.

The petitioner is absolutely right to have submitted the petition. Unfortunately, we cannot go into the alleged sins of the solicitor concerned. Frankly, if we were to go into all the sins of solicitors, we would be here until the beginning of the next millennium. I fully support the recommendation that we refer the petition to the Executive.

**Helen Eadie:** I, too, am interested in the petition. Mr Duff, are you aware of other professions that require people to work outwith areas in which there is a potential conflict of interest? There exists an organisation called Planning Aid. A planning officer cannot help or advise a constituent from the area in which they reside, but must operate in another jurisdiction. Do you know of other professions in which that situation prevails?

**James Duff:** Mr Cooney and I have done a great deal of research in libraries about the appointment of resident sheriffs. There is no record of a solicitor being appointed as a resident sheriff in the area in which they previously worked. As far as I know, Mr Ross is the first person to be so appointed, in contravention of statutory requirements. Parliament passes laws, but those are not being abided by in this case.

First Mr Ross became a temporary sheriff. Then he was appointed a full-time sheriff in Linlithgow. In my view, his ploy was to stay in Linlithgow for a certain amount of time and then apply for an appointment in Dumfries, where all his friends from the past 20 years are located. That is my honest opinion. When the First Minister recommended his appointment in January 2000, he must have been misled somewhere along the line.

**Helen Eadie:** I would like the witness to clarify that statement. Are you saying that guidelines for making judicial appointments already exist in statute and that those guidelines are not being applied?

**James Duff:** Mr Cooney can answer that question, because recently he has spoken to senior judges about it. They have made it quite clear that Mr Ross should not be in his post.

**Derek Cooney:** Mr Ross issued an illegal decree against me because I was one of many people who made a complaint against him. I



petitioned the Court of Session to use its *nobile officium* in the case. There are 32 judges at the Court of Session, and more than 20 of them know me personally. They include Lord Cameron of Lochbroom, who had to resign. He remembers my telling him years ago, when he was Lord Advocate, about Kenneth Ross's behaviour. When the records were checked, they revealed that Lord Cameron had ordered a personal investigation into Ross's conduct, which was covered up. My case was considered by a senior judge, a junior judge and a retired judge. They made it clear that a sheriff cannot sit in an area where he has been involved with clients and cannot deal with cases involving them.

**The Convener:** Are you saying that a sheriff cannot sit in an area where he has previously worked?

11:15

**Derek Cooney:** He cannot. I have taken up the case with the Scottish Executive and have asked it to ask the Lord President for directions. However, the Executive refuses to do that, on the ground that it is awaiting the outcome of my case. Although the Executive is well aware that every civil and criminal case that Mr Ross has dealt with since he went to Dumfries will have to be quashed, it says that it will await the outcome of the case before taking any action against him.

**The Convener:** Are you involved in an on-going legal action?

**Derek Cooney:** Yes.

**The Convener:** Is that against Mr Ross?

**Derek Cooney:** No. It is against Dumfries and Galloway Council, to which Mr Ross granted the illegal decree, but it involves Mr Ross. The case details his past conduct. Everything is there.

**The Convener:** Is that legal action separate from the question of the appointment of judges?

**Derek Cooney:** No. The petition takes up the fact that Mr Ross cannot sit as a sheriff, under the Declinature Act 1594 and the Declinature Act 1681. I have referred judges to much past authority and I am aware from clerks that the court has made representations to the Scottish Executive, which it has ignored, as it awaits the outcome of the case.

**The Convener:** It is important that we understand the position. Does the current legal action involve the question whether Mr Ross should have been appointed as the sheriff at Dumfries and Galloway sheriff court?

**Derek Cooney:** Yes.

**The Convener:** If the matter is before the courts, it is difficult for us to become involved. We

can ask about the general issues that the petition raises, but we cannot become involved in the case.

**Derek Cooney:** The point of the petition is to declare that the illegal decree that Mr Ross granted was indeed illegal. The petition also highlights the fact that he should not have been presiding over my case in the first place.

**The Convener:** I am sorry, but we are treading on dangerous ground.

**Derek Cooney:** The Sheriff Courts (Scotland) Act 1971 allowed the Secretary of State for Scotland to ask the Lord President to conduct an investigation. That happened in the case of Sheriff Stewart. Lord Hope and Lord Ross conducted an investigation, which was referred to the Secretary of State for Scotland, and Stewart was removed. My point is that the courts made it clear in my case that Ross should not be in his post. The matter is up to the Scottish Executive, which refuses to deal with it.

**The Convener:** That is not the subject of the petition. From now on, we cannot deal with whether Mr Ross should be in Dumfries and Galloway sheriff court. That is a matter for on-going legal action, which has nothing to do with the committee. We can address only the general issues about the appointment of sheriffs. We cannot deal with the case, which is *sub judice*. It is as simple as that.

**Phil Gallie:** I will return to the point that Dorothy-Grace Elder and Dr Ewing raised. Why should not a sheriff be appointed to the court in which they practised? Dr Ewing has given good reasons for doing that practice, while Dorothy-Grace Elder talked about its disadvantages. If we forget Sheriff Ross, why do you feel that a sheriff should not sit in his home court?

**Derek Cooney:** I feel that for one reason only. If it is unlawful for him to be appointed, all the cases that he handles will have to be recalled. That is not good for Scottish justice.

**Phil Gallie:** Any sheriff who was a practising solicitor could have been involved in many cases that he deals with at some stage as a sheriff. That is a fair point that I would like to be put to the Scottish Executive.

I am concerned that the petition says that Scottish ministers have been misled. We could at least query that. That could be a matter of libel. I ask Mr Duff whether Sheriff Ross knows that he has made that statement.

**James Duff:** No.

**Phil Gallie:** Given that this is a public meeting, I suspect that if you stick to that line, a libel charge could be made.

**James Duff:** I was only—

**Phil Gallie:** I want to move on to my next question. Are you concerned by the fact that someone can appoint themselves as a commissioner to look after the affairs of a sequestration, even though they had been involved in the situation leading up to the sequestration? I ask you to avoid commenting on Mr Ross.

**James Duff:** It was Mr Ross who caused the sequestration by failing—

**Phil Gallie:** A solicitor caused the sequestration and was then appointed as administrator?

**James Duff:** He was sitting as a commissioner for 17 years with a solvent estate and surplus—

**Phil Gallie:** All right, Mr Duff, but I am trying to move away from that. Let us say simply that a solicitor was involved in the sequestration of your company and that the same solicitor was then appointed to manage it—

**James Duff:** Yes. He kept information back from the sheriff.

**Phil Gallie:** Would it be fair to say that you are concerned about that and that you want to communicate those concerns to the committee?

**James Duff:** Yes. Mr Cooney is also concerned about it.

May I answer the question about libel?

**The Convener:** I have taken advice from the clerks. The position is that there is protection for witnesses who appear before the committee and, indeed, anyone who participates in the work of the committee. However, we are not certain that that protection covers statements that may be libellous.

**James Duff:** I am talking about how the appointment was granted to Mr Ross by the minister. Did he give the minister the information that he had acted as a sheriff for 20 years?

**The Convener:** I must rule that we cannot get involved in the individual appointment of Mr Ross. That issue is simply beyond the powers of this committee, especially as the matter is already sub judice and before the courts. All that we can deal with is the general question of whether the system for appointing sheriffs should be reformed or whether the Executive is reforming that system in the appropriate way. That is the issue that we must address.

If there are no other questions, I thank Mr Duff for his evidence. He is obviously welcome to wait and listen to our discussion.

**James Duff:** Thank you for hearing me.

**The Convener:** The suggested action explains

that we simply cannot become involved in the specific case of the appointment of Mr Ross to Dumfries and Galloway sheriff court. However, we can write to the Executive to ask for its views on the more general issues that the petition raises. We could ask for an update on developments on the proposed independent judicial appointments board that the Executive is promoting. We can also ask the Executive whether the issues that the petitioner raises are likely to be considered by the board when it determines its procedures and criteria for judicial appointments.

Are there other points?

**Helen Eadie:** I agree with the action that the convener has suggested. I also welcome the fact that a judicial appointments board will be appointed. However, I have strong concerns about the potential conflicts of interest, which is the general issue that has been raised and on which we should ask the Scottish Executive to comment. We are all—MSPs and councillors right across the range—obliged to be careful not to get ourselves into a position in which we might have a conflict of interests. I endorse that general point.

**The Convener:** Is it agreed that we include in our letter to the Executive a suggestion that it comment on the potential for conflicts of interest where sheriffs are appointed to sheriffdoms in which they have acted for many years as solicitors?

**Phil Gallie:** That is fine, but I would also like us to ask a general question on whether someone can be appointed as a commissioner for an individual's sequestration when they have been involved in that individual's case beforehand. There may be a conflict of interest in that.

**The Convener:** Under conflict of interest, we will also ask the Executive to comment on whether solicitors who have previously been involved in a sequestration by representing the clients should be able to be appointed as commissioner for that sequestration. Is that agreed?

**Members indicated agreement.**

**The Convener:** We shall write to the Executive in those terms. We will address the petition again when the reply comes in.

## Planning Legislation (PE484)

**The Convener:** Petition PE484 from Mr and Mrs Shields asks the Parliament to investigate the failure to take action on maladministration allegations in relation to planning issues due to the non-clarity of the legislation. From the papers you will see that the petitioners complained to the ombudsman about maladministration by the council in respect of the planning application. The ombudsman told the petitioners that he was

unable to investigate their complaint because there was a right of appeal to the Scottish Executive inquiry reporters unit.

The petitioners appealed to the inquiry reporters unit, which turned down the appeal on planning grounds but made it clear that it is not empowered to investigate allegations of maladministration.

We have had other petitions on the same theme. The Executive's response to those earlier petitions points out that there is a current consultation called "Getting Involved in Planning", which has been extended until the end of April. The Executive confirms that, where a complainant is dissatisfied with the ombudsman's decisions, including decisions relating to compensation or refusal to investigate a case, the complainant may seek redress through the courts.

Again, the committee cannot get involved in individual planning cases. The petitioners seem to be concerned that, although the planning appeal process dealt with the merits of the planning application, it did not address their allegations of maladministration by the council in reaching its original decision.

The petitioners are also concerned that the ombudsman was not able to examine the matter. As members will be aware, it would be open to the petitioners to seek a judicial review of the council's handling of the planning application, although that is a costly road for anyone to go down.

It is suggested that we write to the Executive to seek clarification on whether the remit of the new public sector ombudsman will differ from that of the current local government ombudsman in relation to the planning process. If the remit will not be different, we should ask the Executive to confirm whether the only option that is open to people who wish to have matters such as those that the petitioners raise investigated is to raise a court action. It is further suggested that, in light of the on-going consultation exercise on public involvement in the planning system, the committee should suggest to petitioners that they submit a response for consideration by the Executive. Is that agreed?

**Members indicated agreement.**

### **Sex Offenders (Home Office Project) (PE486)**

**The Convener:** Petition PE486, from Mr John Dick, calls on the Parliament to note the progress of a Home Office project to help sex offenders to avoid reoffending, and to note the work of the Scottish Quakers in applying the principles of that scheme in Scotland. The petition also calls on the Parliament to consider the possible application of the scheme in Scotland.

Mr Dick is referring to a new and imaginative approach in supporting sex offenders to avoid reoffending. The approach has had some success in England. It involves the Quakers and their circles of support and accountability initiative. That initiative relies on a circle of volunteers to provide support to ex-offenders and to help ex-offenders to overcome their anxieties when they leave custody. In Canada, the approach has apparently resulted in low rates of reoffending by former prisoners.

A number of pilot projects are going on in England. The Scottish Quakers are committed to the introduction of the circles initiative in Scotland and they are asking the Parliament, in consultation with justice, police, local government and national health service agencies, to consider the possible application in Scotland of a similar scheme to that funded by the Home Office. There is a meeting later next month in Edinburgh at which the scheme will be discussed by interested parties.

The Executive has announced that it will shortly publish its response to the report by the expert panel on sex offending, which was launched in June 2001.

It is suggested that we should write to the Executive requesting its comments on the issues that are raised in the petition, in particular seeking its views on the potential for the introduction of a scheme in Scotland similar to that being piloted by the Home Office. We might also want to ask the Executive for an update on the impending response to the report by the expert panel.

**Phil Gallie:** Are there any other bodies currently working in the field? What areas of overlap might there be?

**The Convener:** In Scotland?

**Phil Gallie:** Yes.

**The Convener:** You want to ask whether there are any other bodies in Scotland doing work in the field and whether that work corresponds to the work that has been suggested in the petition.

**Phil Gallie:** Local authorities have particular responsibilities and might welcome such outside interests, so it might be useful to seek views on the matter from local authorities.

11:30

**Helen Eadie:** The petition mentions Canada. We should also consider America, where I believe some imaginative work is going on and there is a good programme of rehabilitation for sex offenders.

**The Convener:** So, as well as asking the Executive for information about any other bodies that are involved in work that corresponds to the work of the Quakers, we should ask whether it has

learned any lessons from the experience in Canada and America. Phil Gallie has also suggested that we ask the Convention of Scottish Local Authorities to comment on the petition.

**Phil Gallie:** Yes, because local authorities have related responsibilities.

**Dorothy-Grace Elder:** We could also approach the Scottish Prison Service. The Quakers' offer of help, through a scheme that has worked well in England, comes at a time when there is a threat to Peterhead prison, which is the number one unit in Scotland for the rehabilitation of sex offenders. The mainstream Scottish prisons, such as Barlinnie, do not want sex offenders back. They want them to be sent to the specialist unit at Peterhead.

**The Convener:** As the issue is the treatment of people once they have left prison, it may not be relevant to the situation at Peterhead.

**Dorothy-Grace Elder:** Peterhead has a good scheme that links into the community after people have left prison.

**The Convener:** The Scottish Prison Service is suggesting that Peterhead should close, so it might not be sympathetic to the petition. However, I am sure that we can ask the Executive to comment on any potential implications for the proposed closure of Peterhead prison.

**Dr Ewing:** A body of prison visitors is already engaged in rehabilitation. Could we ask for its view?

**The Convener:** Do you know the name of the organisation?

**Dr Ewing:** I think that it is called the National Association of Prison Visitors. I know people who are involved in it.

**The Convener:** Okay, we will ask for that organisation's comments on the petition.

**Members** *indicated agreement.*

### **Political Process (Young People) (PE487)**

**The Convener:** The next petition is also from Mr John Dick. He wants the Parliament to take a range of steps to encourage young people to become engaged in the political process and adult society. He recognises that the Parliament is already doing valuable work in that respect, but he asks specifically for every 17-year-old in Scotland to visit the Parliament and be welcomed by their constituency MSP; to receive a personalised book about the Parliament, a video of its opening ceremony and other items from the visitor centre; to register as a Y voter; to visit Edinburgh Castle; and to receive a voucher for a free kilt or other tartan garment, such as a skirt or turban, or emblematic jewellery.

The papers that are in front of members point out that the Parliament's education service already undertakes sterling work involving young people. We have welcomed 130 groups from primary schools, 232 groups from secondary schools and 10,000 individual pupils through the official visits programme of the Parliament. There have also been many self-guided tours. The Scottish youth parliament was launched in 1999 and has attracted some 150 members from among young people in the 14-to-25 age category. Visits are also made by young people to Edinburgh Castle to view the Scottish regalia, and Historic Scotland operates a free educational visits scheme under which around 70,000 children a year enjoy a first-hand experience of Historic Scotland's properties.

Much has been done through the Parliament's educational visits programme and by Historic Scotland. It is unclear whether it would be practicable to offer 17-year-olds the programme of visits that is suggested by the petitioner. I do not know how we would manage to get all 17-year-olds in Scotland to come here. Would it be compulsory? It is also unclear how the petitioner's suggestion that each young person should be offered a voucher for a free kilt or other tartan garment would be funded or implemented. The petitioner's main concern is about electoral voting rates among young people. On that point, it is suggested that we copy the petition to the Electoral Commission, which has recently opened a Scottish office and whose role is partly to encourage participation in elections, and should ask for details of any action that the commission is taking to encourage higher voting rates among young people.

**Dr Ewing:** I am full of admiration for what is being done for the schoolchildren who visit the Parliament. Visits depend on the willingness of teachers. Teachers do not have to bring schoolchildren here, and it is quite nerve-wracking for the teachers to have to keep count of the children—particularly the younger ones. I have often seen teachers' harassed faces near the chamber. Participation in visits depends on teachers volunteering to carry out the programme. Maybe we should ask the Educational Institute of Scotland for the views of teachers on the subject.

**The Convener:** Do you seriously think that we should approach the EIS?

**Dr Ewing:** There is no point in us pontificating on giving kids a right to come to the Parliament when we know that such visits depend on the teachers' willingness to bring them.

**The Convener:** We have to respond to the petitioner, who asks for a series of actions to be taken. I detect that most members do not believe that the suggested series of actions should be encouraged, apart from that of trying to involve

younger people in a more meaningful way in the electoral process. That is why we suggest writing to the Electoral Commission, which now has an office in Scotland, as it should deal with the issues that are raised in the petition. I do not detect any need to do anything further at this stage.

**Helen Eadie:** The clerks have outlined our participation with young people well. The Parliament must be congratulated on the work that it has done, although that is not to say that there is no room for improvement.

Other members and I are actively working with the education service. Indeed, I have lined up appointments over the next couple of weeks to discuss with the service how we can help to provide more opportunities. I regularly welcome visits from schools in my constituency of Dunfermline East. The moment that the education service is informed about a delegation of young people from a school, it notifies the constituency and list members as part of the agreed protocol. I always give those school visits a high priority and endeavour to attend them if I can do so, because such visits are critical. In addition, I have carried out surgeries with young people in each of the high schools in my constituency. That is another good way of connecting with young people.

Some of the other aspirations in the petition are slightly beyond what the Parliament could deliver. The difficulty is not with the will but with the resources that would be required to achieve what the petitioner wants. The convener legitimately questioned how we could command every young person to come to the Parliament. We have to entice, encourage and cajole as much as possible. We can do no more than that, although others might have ideas about additional things that we could do.

**Dorothy-Grace Elder:** We are most definitely not in the business of handing out free kilts and turbans. I think that the petitioner is unaware of just how excellent the education service is already. Even under the difficult conditions that are caused by the spread of buildings in the Parliament's campus, every MSP would praise the service, the patience of the parliamentary staff and the marvellous behaviour of the schoolchildren. I sometimes get a wee bit worried when schoolchildren come to the Parliament on a Thursday afternoon and see extremely bad classroom behaviour from MSPs at question time.

**Phil Gallie:** Speak for yourself.

**Dorothy-Grace Elder:** I enjoy my bad behaviour.

**The Convener:** I detect that members agree to the recommendation that we should write to the Electoral Commission.

*Members indicated agreement.*

### **Scottish Government (Accountability) (PE488)**

**The Convener:** PE488 is also from Mr Dick and is on the accountability of the Executive. He is concerned about the Executive's accountability to the Parliament because that accountability depends on the adequacy and quality of information that is provided by civil servants to committees and MSPs. He believes that the Executive is failing to adapt to the devolved system or to effect changes in a civil service culture that remains in tune with the culture of the Westminster Parliament.

Mr Dick makes a number of suggestions for improving the quality of information that is provided by the Executive to the Parliament, including asking the Executive to review the rules, procedures and conventions of the civil service and urging the Executive to implement changes that the review identifies as necessary.

It is pointed out that the issues that relate to the exchange of information between the Executive and the Parliament are dealt with at regular meetings of officials. The petitioner has already submitted similar views to the Procedures Committee for its inquiry into the application of the consultative steering group principles. It is suggested that the Public Petitions Committee should agree to note the petition and to take no further action, given that the Procedures Committee will deal with it as part of that inquiry. Do members have any comments?

**Dr Ewing:** Mr Dick is to be congratulated on spending his time in Stornoway so intellectually.

**The Convener:** Absolutely. He obviously has the best interests of the Parliament at heart—that is to be encouraged these days. Do members agree with the suggested action?

*Members indicated agreement.*

### **Afghan Prisoners (PE489)**

**The Convener:** The next petition, which calls for a debate on the treatment of Afghan prisoners in the USA, is from Mr Ivor Birnie and has 36 signatures. The petition is presented on behalf of the Edinburgh stop the war coalition and was prompted by the coalition's concerns about the imprisonment and treatment of Afghan captives in the USA which, the coalition claims, contravene international agreements.

Members will recall that last December we considered PE 426, which called on the Parliament to hold a full debate on the events of 11 September and the causes of terrorism, and to bring pressure on the British Government to halt

the military campaign against Afghanistan. At that time, we agreed to note the petition and take no further action, on the basis that it was unlikely that the Parliament would wish to debate the issue in the prevailing circumstances, and that it was unlikely that any subject committee would wish to consider the petition further. We also agreed to advise the petitioners that it was open to them to approach any MSP to discuss the possibility of their lodging a motion for such a subject.

It is suggested that in line with the actions taken on PE426, we agree to take no further action on PE489, on the basis that neither the Parliament nor a subject committee is likely to wish to debate or further consider the issues that have been raised, particularly as those issues are discussed regularly in the UK Parliament. It is suggested that the committee should advise the petitioners that it would be open to them to approach MSPs individually with a view to gaining their support for a motion for such a debate, and that it would be more appropriate for them to raise their concerns with their local MP or the relevant UK Government ministers. Is that agreed?

**Members indicated agreement.**

### **Paedophiles (Sentencing) (PE490)**

**The Convener:** The next petition is PE490 from Ms Jacqueline Reid. The committee documents say that the petition has only one signature, but in fact a significant number of signatures were subsequently submitted in support of the petition, which came to the Parliament via Anne Begg MP. Members will see that the petition has the support of Anne Begg, Frank Doran and Malcolm Savidge, who are all MPs. The petition calls on the Parliament to take the necessary steps to amend existing legislation on the sentencing of convicted paedophiles or to introduce new legislation to ensure tough sentencing, with a minimum sentence for repeated convictions.

Members might recall that in June last year we considered PE375, which called for reviews of the criminal injuries compensation procedure and of sentencing policy on violent crime. We agreed to refer that petition to the Justice 1 Committee for further consideration in its impending review of public attitudes to sentencing and alternatives to imprisonment. That committee has recently confirmed that it will consider PE375 shortly, following the completion of its research study, the draft report of which was published last month.

Members might also recall that in response to PE205, which called on the Parliament to review and increase the minimum sentence for convictions of murder, the Executive outlined its role with regard to sentencing. Its role is confined to ensuring that a sufficient range of penalties are

available to the courts to deal with the wide variety of cases that come before them. The Executive's response reiterated that it is for the courts in each case to decide on the most appropriate sentence within the limits that are provided by Parliament. Scottish ministers attach great importance to judicial discretion in sentencing.

Members might also be aware that the Justice 2 Committee is seeking evidence from interested parties on the general principles of the Criminal Justice (Scotland) Bill. That bill seeks to introduce a variety of changes to Scottish criminal law. In particular, the bill addresses the assessment and treatment of serious violent and sexual offenders, and deals with the custody and detention of prisoners and the monitoring of their movements on release. In relation to PE490, part 3 of the bill seeks to increase the terms of imprisonment for the possession and distribution of indecent photographs of children, and seeks to widen the scope of the extended sentences that are available for sexual and violent offenders who are convicted of abduction.

It is suggested that we refer the petition to the Justice 2 Committee, to be taken into account as part of that committee's consideration of the Criminal Justice (Scotland) Bill. We might wish to copy the petition to the clerk of the Justice 1 Committee for information, in view of that committee's inquiry into public attitudes towards sentencing and alternatives to imprisonment. Is that agreed?

**Members indicated agreement.**

**Phil Gallie:** I have a quick point. Although I recognise the objectives of the Criminal Justice (Scotland) Bill with respect to minimum sentencing for repeated convictions, it is sad to think that there is a need for that—even though I recognise why there is a need. I am concerned about the maximum sentences that can be handed down. I would like an assurance that there is no ceiling on the sentences that courts can hand down.

11:45

**The Convener:** We will ensure that your comments are referred to the Justice 2 Committee, which will be dealing with the petition.

### **HMP Peterhead (PE494)**

**The Convener:** The last of the new petitions is PE494, which is from prisoners in HM Prison Peterhead. It calls on the Parliament to urge the Scottish Executive not to close Peterhead prison, and to provide a new, safer, modern unit where prisoners can continue to rehabilitate. They are concerned about the potential impact of the closure of Peterhead. They argue that the environment at Peterhead is much more

conducive to the successful rehabilitation of offenders. They distinguish between the situation in Peterhead prison, which provides a safe environment where inmates are treated with dignity, and the situation in local prisons, where offenders and their visitors have been subjected to threats of violence, intimidation, humiliation and bullying at the hands of fellow inmates and prison staff.

Following the prison estates review, the Scottish Prison Service is proposing to close Peterhead and Low Moss and to build three new prisons that will be designed, constructed and operated by the private sector. A Scottish Parliament information centre briefing from last month provided an insight into the estates review's recommendation to close Peterhead. The review concluded that the buildings were substandard and had reached the end of their useful life. It is proposed that the work of Peterhead should be transferred to prisons in central Scotland.

The petition was submitted in the first instance to the Justice 1 Committee but, in accordance with parliamentary procedure, it has been forwarded to the Public Petitions Committee for initial consideration. However, members may wish to note that the Justice 1 Committee has indicated a willingness to examine further the petition as part of its consideration of the estates review.

It is recommended that we refer the petition to the Justice 1 Committee for further consideration.

**Dr Ewing:** Will we write to the petitioners? I have a number of suggestions.

**The Convener:** It is our role to keep the prisoners informed of the petition's progress.

**Dr Ewing:** In that case I would like to make three points about what we should say to them. One of the Parliament's security guards worked for the Scottish Prison Service for 34 years—perhaps members know him. He spent most of his time in Peterhead and later moved to Saughton; he has enormous experience. When I discussed the issue with him from the point of view of prison officers, he said that the only place in Scotland where a sex offender can have what he would call a life is in Peterhead, because in other prisons in central Scotland they have to be locked up for almost 24 hours a day in the interests of their safety. In Peterhead they have a life of some sort, and if they have any kind of life they might be subject to rehabilitation, which is the aim of it all. We must recognise that sending such offenders to any other prison is a disaster. The petition is politely worded, but behind it all is rampant fear.

Peterhead is one of the top three prisons of its sort in the world, yet we are proposing to abandon it. That is absurd. It is recognised that it has one of the top three rehabilitation programmes for sex

offending—such provision is non-existent in other prisons in Scotland.

Finally, whereas almost everyone objects to having a prison on their doorstep, there is no nimbyism in Peterhead. The community is behind the prison and supports its work. The warders are devoted to their job. Those are the things that I would like to be included in a letter to the prisoners.

**The Convener:** It is important that the Justice 1 Committee is aware of your points. I think that members across the committee share those views.

**Phil Gallie:** Not quite. I agree with rehabilitation, but I also think that prison is a punishment and part of the punishment for some of those individuals is to be despised by their criminal colleagues. If that makes life in prison uncomfortable for them—without violence—it is part of the deterrent factor. That life in prison might be uncomfortable for prisoners is the least persuasive argument that I have heard for the retention of Peterhead, although there are many good arguments from other sources.

**Dr Ewing:** It is the violence that worries me.

**Dorothy-Grace Elder:** The potential for violence worries me, too. I know that Barlinnie, which I have had contact with for many years, was very glad that Peterhead could take offenders on its special course—of course, Barlinnie has its own rehabilitation programme. The provision for sex offenders at Peterhead defuses the general prison situation in Scotland. I hope that, in the flurry and hurry of the day, the Justice 1 Committee does not ignore the fact that the petition is extraordinary. Where else have we heard of prisoners praising their jail and appealing for it to remain open? It could be a world first.

**Helen Eadie:** I sat in on the debate last Thursday and I know that the convener of the Justice 1 Committee has invited any member of the Parliament to sit in on that committee's evidence-taking sessions over the next few weeks. The main issue that came up last week was privatisation. Just about every person who spoke in the debate separated out privately building a new prison from privately running that prison. I suspect that the comments of Winnie Ewing and Dorothy-Grace Elder have to do with the issue of privately running a prison. The point that came out of the debate was that it would be morally reprehensible for the state to take away someone's liberty and put them into the hands of someone who could profit from the removal of their liberty. Certainly, a prison should be run by the public sector. However, Jim Wallace's point was important: we have signed up to the European convention on human rights, which

means that we were supposed to have ended the practice of slopping out by 2000. That means that we need to have new prisons built. Jim Wallace pointed out that it would take up to 13 years to have a new prison built under the public sector but only three years under the private sector. I am not qualified to judge whether that statement is right or not. It disappoints me that the public sector cannot meet the targets sooner than that, but that is a debate for another time.

I endorse the view that Parliament should take a close interest in this matter. We should go along to hear the evidence that will be given to the Justice 1 Committee. Last year, I keenly read the report of the then moderator of the General Assembly of the Church of Scotland. He had visited every prison in Scotland and was concerned about the fact that we might go down the route of taking away someone's liberty and putting them in the hands of the private sector. The views of the Church of Scotland and the trade unions on the matter weigh heavily on me and lead me to think that the Scottish Parliament should think carefully about the matter before we go down the route of privatisation.

**Phil Gallie:** On a point of accuracy, the moderator of the General Assembly of the Church of Scotland was very positive about the private prison in Kilmarnock and said that that balanced his views. However, I do not think that that has anything to do with the petition.

**The Convener:** In any case, to ensure that both the petitioners and the Justice 1 Committee are aware of the range of views within the committee, we will send a copy of the *Official Report* to them.

Do we agree to send the petition to the Justice 1 Committee for its consideration?

**Members indicated agreement.**

## Current Petitions

### Peatland Conservation (PE301)

**The Convener:** The first of the current petitions is PE301, from Steve Sankey of the Scottish Wildlife Trust. The petition has more than 3,900 signatures and calls for 17 additional candidate peatland sites to become special areas of conservation. We agreed to ask the Scottish Executive to let us know when it had received advice from Scottish Natural Heritage on the proposed additional 17 raised peatland sites, together with details of the action that it intends to take in the light of that advice.

Since then, the Executive has kept the clerks informed of its progress. Another response that has been received from the Executive provides details of an announcement that was made by the Deputy Minister for Environment and Rural Development on 27 March 2002 regarding the selection of several new proposed Scottish bog candidate SACs. The sites are listed in the documents. The Executive's response indicates that the Scottish Wildlife Trust's reaction to the announcement has been positive and that it does not anticipate any further action from the organisation in relation to the matter.

The Executive seems to have gone some way toward meeting the petitioners' objectives. Indeed, its response indicates that the Scottish Wildlife Trust is content with the announcement of five additional SAC sites. However, it is suggested that, before concluding the petition, we might write to the Scottish Wildlife Trust seeking an assurance that it is content with the response from the Executive. Is that agreed?

**Members indicated agreement.**

### Nuclear Disarmament (PE334 and PE364)

**The Convener:** The next two petitions are from Mr Tony Southall, on behalf of the Scottish Campaign for Nuclear Disarmament. The first deals with the review of emergency planning measures for nuclear submarine accidents and the second is about the adverse consequences of the location and operation in Scotland of nuclear weapons systems.

Members will remember that we wrote at various stages to the Scottish Executive, to the local authorities concerned and to Nuclear Free Local Authorities (Scotland). Ultimately, we decided to ask the Transport and the Environment Committee and the Justice 2 Committee whether they were interested in taking up the two petitions. The Transport and the Environment Committee decided that the subject of the petitions was not a matter for it but for the Justice 2 Committee. It was



therefore left to the Justice 2 Committee to take the petitions further if it wanted to. That committee's members were advised to contact the committee's clerks by 10 September if they wished the committee to carry out an investigation into the issues that are raised in either petition, but no members of the Justice 2 Committee took the opportunity to do so.

The Public Petitions Committee's clerks were advised of the position only in March this year. We have been waiting for some time to establish whether the Justice 2 Committee is minded to consider further the issues raised in the petitions. We have now been informed that it is not. It is therefore suggested that the committee should formally agree that no further action should be taken in relation to either of the petitions and that accordingly we should inform the petitioners of the situation.

**Dorothy-Grace Elder:** I wonder whether the Health and Community Care Committee would not have been a more appropriate committee to consult on reviewing the emergency planning measures for nuclear submarine accidents, rather than the Justice 2 Committee. Health and the devastation of human beings are the number 1 issue in the matter, apart from the environment. Should the petitions be forwarded to the Health and Community Care Committee? There are regular exercises and mock-ups of the evacuation of Helensburgh, and I think that the Health and Community Care Committee has seen papers on that in the past. It is a huge issue. The base at Faslane could take out the whole of Scotland and get Europe on the way back.

**The Convener:** There is no doubt that it is a major issue, but no one questions the fact that it is the remit of the justice committees to address such petitions. The Health and Community Care Committee has been involved as an interested party, but the Justice 2 Committee has indicated that it is not prepared to take up the issue. That is unfortunate, but we do not have the powers to take up the matter.

**Dorothy-Grace Elder:** The petitioners are calling for the Scottish Parliament to ask the Executive to initiate a review of emergency planning measures.

**The Convener:** Any petition would go initially to the committee whose remit covers that area. When the petition first arrived, that was the Justice and Home Affairs Committee. Now, there are two justice committees.

**Dorothy-Grace Elder:** I still do not twig at all why the Justice 2 Committee is involved in the operational facets of the matter.

**The Convener:** I am informed that the Scottish Executive justice department co-ordinates such

activities and the justice committees shadow the justice department. That is why the matter comes under that committee's remit.

**Dr Ewing:** Having had Dounreay in my constituency for a long time, I was intrigued to know what would happen if there was a meltdown. There has not been one, although it is a possibility. I was interested in the detail of what would happen. The information was to some extent guarded, but I think that the locals are entitled to know what would happen if there were a meltdown. Apparently, the local authority would be responsible for dealing with people who were endangered, but could not take them to local hospitals, because that would make the hospitals out of bounds, so they proposed to take them to school buildings. That involves transport and health. With Faslane on the doorstep of the industrial population of Scotland, it seems extraordinary that we are just told, "That's the end of it." We have not tried the Health and Community Care Committee yet, have we?

**The Convener:** No.

**Dorothy-Grace Elder:** Health would be a primary concern. I agree with Winnie Ewing. I have heard of previous plans for the Helensburgh area, under which schools were to be commandeered to accept the wounded who remained after a nuclear accident.

12:00

**The Convener:** Would it be possible for us to write to the Health and Community Care Committee to ask whether it wishes to take up the health implications of the petition? We could mention the fact that the Justice 2 Committee is not interested in doing so. We should write such a letter in order to keep the Health and Community Care Committee fully in the picture.

We always come up against this: as a petitions committee, we cannot go any further once a policy committee decides that it does not want to do anything. That is one of the weaknesses of the system.

It would be the first of the petitions—PE334—that we would pass on to the Health and Community Care Committee. I do not think that the second petition—PE364—has a direct bearing on health. It deals only with the question whether Trident weapons should be on the Clyde.

**Dr Ewing:** No—PE364 covers health. It says:

"Recognising ... the health and environmental dangers".

**Dorothy-Grace Elder:** I do not think that the Justice 2 Committee is doing the public much good. Would not it add to panic if the public had absolutely no idea in advance about what the

score would be, and about what they would have to do? It cannot all be left to the emergency services.

**Phil Gallie:** Winifred Ewing was right to cite Dounreay, where a local emergency action committee would involve all the main emergency services, including the health service. I suggest that, to broaden the committee's knowledge, it would be fair to ask what facilities exist at Faslane. We would then be able to make an informed decision.

**Dr Ewing:** Why not? That is a good idea.

**Dorothy-Grace Elder:** We could write directly to Faslane, in other words.

**The Convener:** Remember that our record in dealing with the petitions in question goes back to February 2001. We have already had extensive replies from the local authorities involved and from the Scottish Executive about the existing emergency arrangements. There is an argument about whether those arrangements are adequate.

**Dr Ewing:** Are they updated?

**The Convener:** Yes, they are continually reviewed and updated. If members wish to continue with the petition, the only way forward that I can see would be to ask the Health and Community Care Committee whether it would be interested in considering the health implications of the emergency arrangements that exist to look after the nuclear weapons system that is located in Scotland. That committee would not have an interest other than in the health implications.

**Dorothy-Grace Elder:** I agree that health should definitely be a consideration. However, in any other situation, the public is informed about what to do, whether that relates to the simple evacuation of a cinema or school. I am not implicating the committee in saying this but, once again, information is being fudged because the word "nuclear" is involved.

**Dr Ewing:** Information is always fudged.

**Dorothy-Grace Elder:** People must know what to do if the worst happens.

**Dr Ewing:** Nobody knows what to do.

**Dorothy-Grace Elder:** There is a 144-nuclear-warhead potential in each submarine.

**The Convener:** As far as I know, the emergency arrangements are public documents and are available.

**Dorothy-Grace Elder:** Do we hold regular press conferences to bring that to the attention of the public? No, we do not.

**Helen Eadie:** In the context of Rosyth, where I used to be an elected member, a document called

ROSPUBSAFE—or "Rosyth public safety"—was published. That was a publicly available document, which was regularly updated.

As an elected member for that area I, like others, was invited to be a part of the process. That process embraced all kinds of guidance, including what the emergency services and the local authority's emergency planning team would be expected to do in such a situation. My understanding from serving as an elected member in the Rosyth area was that the same kind of scenario applied to other nuclear establishments in Scotland: they are required to give such information and policy guidance to their local communities.

**The Convener:** The Public Petitions Committee has referred the petition to the appropriate committee, which has not shown an interest in taking the matter up. That is the unfortunate situation in which we find ourselves. We could write to the Health and Community Care Committee to ask whether it is prepared to consider whether the health arrangements in the event of a nuclear accident are satisfactory.

**Dr Ewing:** I was not on the Public Petitions Committee when the Faslane safety plan was apparently made available. I wonder whether the clerks could provide me with a copy for my own satisfaction.

**The Convener:** Sure. Extensive material came in from all the bodies that we wrote to.

**Dr Ewing:** I am sorry to be a bother, but I will read it.

**Dorothy-Grace Elder:** Can we write to the Admiralty as well?

**The Convener:** We should first establish whether the Health and Community Care Committee is interested in the petition.

**Dorothy-Grace Elder:** As the convener and I are members of the Health and Community Care Committee, we know that the committee would be interested in the petition. However, that committee does not have time to consider everything.

**The Convener:** We can write to the Admiralty, but we will get the same reply that we received from the Scottish Executive.

**Dorothy-Grace Elder:** The problem is time—it is not that committees are not interested in petitions.

**The Convener:** Do we agree to ask the Health and Community Care Committee whether it is interested in pursuing the issues that are raised in petition PE334? The Health and Community Care Committee does not have a direct interest in petition PE364, so we must conclude consideration of that petition.

**Members indicated agreement.**

### **Scottish Prison Service (Age Discrimination) (PE404)**

**The Convener:** The next petition for consideration is PE404, from Mr Walter Limond, and concerns age discrimination by the Scottish Prison Service. Members will recall that Mr Limond is 58 and is concerned that he is not being allowed to remain until he is 60 in service as a prison officer. He has applied to continue in service until he is 60, but the Scottish Prison Service has turned down that request.

We took up the issue that is raised in the petition with the Scottish Prison Service, which outlined its policy, and with the Prison Officers Association Scotland, which said that it did not agree with the line that the SPS was taking. For that reason, we agreed to write again to the SPS to establish whether the policy had been implemented to manage surplus staff in the short term and whether the policy has been reviewed.

We have received a response from the Scottish Prison Service, a copy of which is attached to members' papers. The response restates the background to the retirement policy and explains that it was introduced to deal with situations in which the Scottish Prison Service found itself with surplus staff. It says that the policy was reaffirmed to staff this year, following a review of the policy with the recognised trade unions. The response makes it clear that the SPS might be faced with further staff surpluses, depending on the outcome of the estates review consultation process. It points out that the service wants to avoid the need to carry out forced compulsory redundancies in such circumstances.

In the light of the information in the response—in particular, the ruling by House of Lords that the Scottish Prison Service's policy in this area does not discriminate against the staff who are affected, and the SPS's recent reaffirmation of the policy—it is suggested that we agree to take no further action in relation to the petition.

**Helen Eadie:** I am not sure that I agree with that. We should question the use of agism to support a redundancy policy. As a former trade union official, I know that there must be criteria for redundancy. However, redundancy criteria do not have to foster agism, which is a creeping tendency throughout Scotland. I have genuine concerns about the issue, because for some months a constituent has been coming relentlessly to my advice surgeries to talk about it. Does not the subject have Europe-wide significance? Perhaps we should consider referring the petition to the European Parliament Committee on Petitions. From documents that I have read recently, I know

that the committees of the European Parliament intend to examine the age profile of European employees.

**The Convener:** We could ask the petitioner to take his petition to the European Parliament, or we could refer it to the European Parliament Committee on Petitions. If we are concerned about agism in the SPS's policy, we could refer the petition to the Equal Opportunities Committee for comment.

**Dr Ewing:** We cannot refer the petition to the European Parliament Committee on Petitions. Petitions must be submitted to that committee by individuals.

**Helen Eadie:** No—we have done that before.

**The Convener:** Shall we begin by referring the petition to the Equal Opportunities Committee and requesting that it comment on the agism implications of the SPS's policy?

**Phil Gallie:** I agree with what Helen Eadie said, but in some jobs—the fire service and, perhaps, the Scottish Prison Service—age can affect one's ability to perform. However, if a person is capable of doing a job, age should not be a barrier to that.

**The Convener:** Do we agree formally to refer the petition to the Equal Opportunities Committee and to ask it to consider the issue of agism in the SPS's policy?

**Helen Eadie:** Does that mean that we would lose control of the petition and that it would not come back to us?

**The Convener:** It would be the Equal Opportunities Committee's responsibility to deal with the petition.

**Helen Eadie:** It would be better if we kept control of the petition because that would keep open the option of sending it to the European Parliament's Committee on Petitions.

**Phil Gallie:** Will the Equal Opportunities Committee send the petition back to us?

**The Convener:** No. Under the standing orders, the petition becomes the property of the Equal Opportunities Committee; it must respond to the petitioner. We must ensure that the Equal Opportunities Committee responds to the petitioner. The alternative is to write to the Equal Opportunities Committee to ask whether it is likely to examine the issue.

**Helen Eadie:** I prefer that alternative.

**Phil Gallie:** On a point of order, convener. Given the rule that you have just described, why the heck did the petitions from CND come back to us from the Justice 2 Committee?

**The Convener:** We wrote to the Justice 2

Committee, but we did not refer the petition formally to that committee.

**Phil Gallie:** Okay.

**Dorothy-Grace Elder:** I am glad that Helen Eadie intervened because too many times—in the Parliament and in the outside world—we let things slip by. The Scottish Prison Service's letter uses the words "surplus staff". The SPS assume that we will accept that because the phrase is used in connection with paying off older staff. Even the House of Lords accepted the matter although—goodness knows—many peers are old enough to suffer from age discrimination if any of them could get a job in the outside world. Everyone has blandly accepted the matter, but we should not just accept it. Agism is one of the last "isms" to be tackled. When private industry is trying hard to recruit older people and when there is the demographic time bomb of too few teenagers, it is downright stupid that the SPS should write letters saying that it is okay to brush off older people. I thank Helen Eadie for raising the issue.

**The Convener:** I suggest that as well as writing to the Equal Opportunities Committee, we should write to the Prison Officers Association Scotland to ask for its comments. Is that agreed?

**Members indicated agreement.**

**Dorothy-Grace Elder:** The POA Scotland should not accept the situation either.

**Helen Eadie:** Perhaps we could also write to the Scottish Trades Union Congress. I am aware that it has campaigned on the "ism" to which Dorothy-Grace referred. The SPS is sending out the wrong message to people in Scotland. There are some superb workers who are older than 50, 60 or 65. They can make a valuable contribution to society. I want the Parliament to enable them to make that contribution.

**Dorothy-Grace Elder:** I disagree with Phil Gallie about the physical strength factor in the fire service. The army has found that young recruits have extremely poor upper-body strength for tasks such as lifting stretchers over fences. It has been found that older people can be fitter in that way. There should be no discrimination on grounds of strength. People must be judged as individuals.

**Phil Gallie:** I want to defend myself. I spoke about capability for the job. I am sure that if a younger person is not physically equipped to deal with a job in the fire service, he will not be appointed.

**The Convener:** We are not debating agism. We have agreed to write to the three bodies concerned—the Equal Opportunities Committee, POA Scotland and the STUC—for comments on the petition and the agist implications.

**Helen Eadie:** Can we also send a copy of the *Official Report* of the meeting?

**The Convener:** Yes.

### Green-belt Development (PE435)

**The Convener:** Petition PE435 from Mr Peter Stephen is on guidance on green-belt development. Mr Stephen asked the Parliament to investigate Executive policy on green-belt development by considering whether the policy is sufficiently firm and whether local authorities uphold it. Mr Stephen was concerned about the proposal to build a new football stadium for Aberdeen Football Club on land that is designated as being within a green belt. We asked the Executive for its comments and—at our meeting on 12 March—decided that the Executive's response addressed the issues that were raised in the petition and explained how current policies apply. The Executive made it clear that it has no immediate plans to review the policy, but will continue to keep under review the need to amend existing law.

Members agreed to write to the Executive to request comments on the concerns that Phil Gallie raised about the adherence to planning guidance and the practical application of the green-belt policy. Phil Gallie quoted two specific example of planning cases in Ayrshire. We have received a response from the Executive, which gives background details on the two cases. In the first case, the planning authority, which is still processing the application, has confirmed that if there is a recommendation to grant consent, the case will be referred to Scottish ministers. Therefore, the Executive's formal involvement in the matter has yet to commence.

The Executive indicates that the second case was notified to Scottish ministers because it involved a significant departure from the development plan. A public local inquiry was held and a decision letter that gave approval for the stadium, but which refused consent for the retail element of the application, was issued in November 2000.

12:15

It is suggested that the Executive has demonstrated that it is dealing with both the cases to which Phil Gallie referred in a manner that is consistent with current planning procedures and policy guidance.

It also appears that the planning proposal that prompted the petition is being dealt with through the established planning process. The structure plan has been modified and objectors' concerns have been responded to. If a particular site is identified as part of the local planning process,

objectors will have further opportunity to have their concerns addressed.

On the more general issue of the need to review green-belt policy, the Executive's response, which the committee considered on 12 March, says that the Executive does not consider that such a review is necessary at the present time.

Furthermore, the concerns that were raised in the petition relate strongly to the petitioners' concerns about a particular development proposal in their area. It is suggested that their concerns do not demonstrate sufficiently the need for a review of national planning policy on green-belt development.

It is recommended that the committee should agree to advise the petitioners to continue to voice their concerns as part of the established planning process. The committee should take no further action, other than to copy the Executive responses to the clerk to the Transport and the Environment Committee, for information only.

**Phil Gallie:** On the Alloway application, the Scottish Executive's letter is absolutely accurate and I am happy with the situation. However, the letter is not full in its detailing of the stadium situation. I am not happy with the simple statement that local planning decisions are okay,

"but there are occasions when they require to be taken at a higher plane."

That is a rather a bland, authoritarian and centralist statement.

Although the Executive claims that it proceeded with the matter quickly and advises of the appeal that was made, the Executive does not say that the appeal was doomed to failure from the start because of the initial flawed decision. No reference is made to that. Although the Executive claims that the matter was dealt with expeditiously, its failure to acknowledge its mistake cost 18 months.

The Executive has also not referred to the fact that the report of the inquiry that it set up came out in favour of the stadium and the retail complex. Even though that was why I raised the matter in the Public Petitions Committee, the Executive has provided no explanation for that. The Executive said that there was something wrong, called the matter in and set up a planning hearing on it. When the Executive received the report, it simply rejected it. That seemed to be wrong and the letter does not make it clear that the Executive made several mistakes with the application.

**The Convener:** We are in a difficult position, because the petition relates to a planning application for a new stadium in Aberdeen and to green-belt policy in general. You raise an issue that is to do with Ayrshire, which the petitioners are not specifically interested in. Does a general

issue arise in relation to green-belt policy, which you want us to pursue? We cannot get involved in individual planning decisions, which in any case are nothing to do with the petition.

**Phil Gallie:** I have the same difficulty as the petitioner, who is not able to use the petition in relation to a specific application. That is why I broadened out the discussion. I took the opportunity to pick up on the two instances that I referred to. The second situation—the Ayr stadium situation—has significance in green-belt development because the intention was to use the brown belt and to avoid the wider use of the green belt, which we all applaud. A question remains to be answered. I am grateful that you took the matter up, convener. The way in which the matter was presented was bang on. However, the committee has been fed duff information, which I take great exception to. I hope that the committee will back me up on that.

**The Convener:** I suggest that you make available to the clerks the detail of how the Executive has, in your opinion, failed to give us a full reply, as it is difficult to grasp in one presentation. We will then take the matter up with the Executive.

**Phil Gallie:** I will do that. However, I will summarise the problem now for committee members, because I know that they will not have time to read the details.

In the first situation, Heritage Scotland lodged an appeal against the decision. The Executive determined that it would go through the courts. Time and again I lodged parliamentary questions asking the ministers to abandon their appeal because it was based on a flawed decision. They refused to do so until March this year, when they finally pulled the plug on the court action. That case involved a massive delay of 18 months.

In the second situation, the Executive was right to set up a public inquiry, but I feel that it broke the guidelines by rejecting its own reporter's decisions. We should all be a little concerned about that.

**Helen Eadie:** I support the Executive's sometimes rejecting a reporter's decisions. I am aware of examples from my constituency where the reporter has decided to go a certain way against the wishes of democratically elected local representatives. I applaud warmly a situation in which the Executive takes more cognisance of democratically elected local representatives than of its reporter.

**Phil Gallie:** I agree with that 100 per cent. The local authority decided unanimously to determine the application in line with the reporter's findings. The reporter upheld local democracy. I am sure that you agree that that was a good thing.

**The Convener:** We are in a difficult position, as the petition has nothing to do with the situations in Ayrshire. I suggest that we agree to conclude the petition, send copies of the replies to the petitioners and write separately to the Executive, commenting on the detail of its reply and pointing out that committee members are not satisfied that they got a full answer.

*Members indicated agreement.*

### **Film Industry (PE442)**

**The Convener:** Petition PE442, from Mr Howard Campbell, is about the establishment of a film industry in Scotland. We agreed to write to the Executive requesting an update on the national cultural strategy initiatives relating to the film industry in Scotland and to seek the Executive's views on the potential benefits of introducing tax breaks for the film industry in Scotland.

We have a response from the Executive. A copy is attached to the committee papers. The committee will see from the response that the Executive's aim is to make Scotland "film-friendly" and to support Scottish Screen in developing a film charter for Scotland and initiatives to establish a Scottish film studio. It explains in some detail Scottish Screen's current remit and role in distributing national lottery funds to film in Scotland, in raising the profile of film making in Scotland, in offering support, advice and finance towards the development of feature films and in providing training and development for film, television and new media. The Executive also indicates that there has been a gradual but steady rise in film production in Scotland over the past decade and an increase in the annual spend on films in Scotland.

The response points out that there is a widely shared view that Scotland does not yet have a film industry as such, but rather a film-making community, which does not yet contain enough competent, viable businesses of sufficient size to comprise an industrial context for development. Scotland is estimated to have around 165 businesses and approximately 5,500 jobs in film.

The response also provides details of the proposal to establish a film studio and addresses the issue of tax breaks for the film industry in Scotland. It points out that the Chancellor's decision in his previous budget to extend tax relief for film production until 2005 will continue to encourage investment in film production and that that tax relief has provided more than £100 million of direct benefit to the film production industry in the United Kingdom over the last three years. The Executive also informs the committee that the development of a film charter for Scotland has been put on hold temporarily due to the review of

Scottish Screen.

It is suggested that we should agree that no further action be taken on the petition, as initiatives are being pursued to develop the film industry in Scotland. Alternatively, we could take the view that the matter merits further consideration and refer the petition to the Education, Culture and Sport Committee.

**Dr Ewing:** I notice that, although the reply is encouraging in that it mentions many initiatives, there is no time scale. Because of that, I suggest that we refer the petition to the Education, Culture and Sport Committee. There are members on that committee who are very keen for the film industry to move on. The petition would get a sympathetic hearing there.

**The Convener:** Is it agreed that we refer the petition to the Education, Culture and Sport Committee?

*Members indicated agreement.*

### **Scottish Local Authorities (Efficiency) (PE450)**

**The Convener:** Petition PE450, from Mr Stan Gregory, concerns the review of the objectives and structure of Scottish local authorities. The committee has already considered this petition and a similar, earlier petition. We agreed to refer PE450 to the Scottish Executive and COSLA to ask for their comments. The petition concerns the effect of monitoring and improving the efficiency of local authorities.

COSLA's brief response expresses the view that existing systems of scrutiny are sufficient to monitor the efficiency of local government. Therefore, COSLA does not support the petitioner's view that resources should be deployed to employ independent professional consultants for that purpose.

The Executive's response provides details of additional resources that it provides through local councils to deliver service improvements. Over the three years of the current spending review, grant to local authorities will increase by £1.4 billion to more than £7 billion by 2003-04. The Executive makes it clear that it is for local authorities to organise and deliver services that are appropriate to local needs, although it is keen to promote good practice and innovation.

The response points out that the local government bill will create a new statutory duty to pursue continuous improvement and will extend councils' obligations to report on their performance. The bill will also strengthen the Accounts Commission's responsibilities for monitoring council performance. The Executive's response also provides details of the piloting of local outcome agreements in several authorities.

The Executive states that ministers are considering what further support can be provided to assist councils in adopting best practice and to promote continuous improvement. Where appropriate, that might include the involvement of relevant external expertise.

It appears that the Executive is active in pursuing initiatives to help improve the efficiency of local government in Scotland. It will soon create a statutory duty for councils to pursue improvement in their performance and monitoring procedures. It is interesting to note that the involvement of external expertise, which the petitioner suggested, may be considered.

In the light of the steps that the Executive is taking, it is suggested that we should agree to copy the responses from the Executive and COSLA to the petitioner and take no further action. Is that agreed?

**Members** *indicated agreement.*

### **Greater Glasgow NHS Board (Consultation) (PE453)**

**The Convener:** Petition PE453 is from Father Stephen Dunn, on the secure unit in the Greater Glasgow NHS Board area. The committee has dealt with the petition for a considerable time. It revolves around the petitioner's continuing concern about the scoring groups that were used to secure the preferred site at Stobhill in Glasgow.

Members have a record of committee's previous consideration, which began on 5 February, and the latest response from Greater Glasgow NHS Board, which addresses the additional points that Paul Martin raised at a previous meeting. There are details of the positions taken by MSPs in response to the scoring process.

Greater Glasgow NHS Board has apologised for not providing the committee with the information in its previous letter, but it provides further information on the rationale for proceeding with scoring in the way that it did. The response also covers the specific point that Mr Martin raised about the transport study and confirms that Paul Martin's formal complaint, which relates to a member of its staff, has been investigated and that a reply has been issued to him.

Paul Martin has submitted an additional letter to me, in which he refers to a letter that he wrote to the chief executive of Greater Glasgow NHS Board in November 2001, which stated that Glasgow Labour MSPs did not support the structure of the scoring groups. He also encloses copies of letters to the chief executive from Brian Fitzpatrick MSP and Janis Hughes MSP, which indicate that they would boycott the event.

Mr Martin calls for the committee to take into account what he considers to be a deliberate attempt by the board to misinform it. He asks the committee to consider what action the Minister for Health and Community Care could take in respect of what he considers to be a flawed consultation process whereby members have been prevented from taking part in an event that affects the future of mental health in Glasgow.

12:30

It is clear that the board thinks that it has conducted a consultation process in as full and inclusive a manner as possible. The board's view is that Stobhill has been demonstrated to be the best site and that it has been supported by the health board, local authority representatives, the health council, staff, those who represent user and carer interests and the community councils.

Individual MSPs have strong views about the handling of the matter, but the location of the secure unit at Stobhill is a matter for the health board and the committee cannot seek to intervene or interfere. It has been claimed that MSPs were prevented from taking part in the scoring event, but they chose to boycott it. If the petitioners think that the health board has not dealt with the matter correctly, it would be open to them to take that up with the health service ombudsman.

However, it is suggested that the concerns that have been raised by the petitioners and MSPs could legitimately be considered to be a test of the recommendations for improved consultation by health boards that were made by the Health and Community Care Committee, following its consideration of PE48. It is suggested that we refer the petition and its associated correspondence to the Health and Community Care Committee, with the recommendation that it consider further the more general issues highlighted by the petition in the context of its previous recommendations.

**Helen Eadie:** I am not happy with that suggestion. I have been supportive of the view that the Public Petitions Committee should not seek to change decisions by bodies on the tier below it. However, I am now coming to the view that, in the case of quangos, we should be exploring the general principle more carefully. It seems that health boards across Scotland are acting against the general will of local people and individual MSPs.

We should write to the Health and Community Care Committee asking for its views, rather than referring the petition formally. We should also seek the views of Paul Martin, Janis Hughes and Brian Fitzpatrick and send them the report and a full copy of the *Official Report* of today's discussion.

**The Convener:** The committee has consistently taken the view that we should not get involved in the executive decisions of other bodies. PE48, on Stobhill, was submitted a long time ago. The Health and Community Care Committee dealt with that petition and laid out recommendations on the consultation methods of health boards in such circumstances. The best way to handle the petition would be to refer it to the Health and Community Care Committee to ascertain whether the latest decision was taken in line with the recommendations that that committee made a couple of years ago. We can keep Paul Martin, Janis Hughes and Brian Fitzpatrick informed of what we are doing, but it is for the Health and Community Care Committee to carry out that investigation, rather than the Public Petitions Committee. Dorothy-Grace Elder and I are both members of the Health and Community Care Committee.

**Helen Eadie:** Realistically, will the Health and Community Care Committee have time to consider the petition? I am happy to accept the recommendation if you can assure me that the petition will be given a fair hearing.

**The Convener:** I think that it will. There has been some delay in the mental health legislation that was to come before the committee, so it is not as pressed for time as it has been.

**Helen Eadie:** In that case, I bow to your greater wisdom. However, I am still concerned that, as an elected body, we should not slavishly follow quangos.

**The Convener:** Absolutely not. The Health and Community Care Committee is the relevant committee and I am sure that it will hold the health boards to account.

**Phil Gallie:** Does the Scottish Executive have the final say on the issue?

**The Convener:** The health board is an agent of the Scottish Executive.

**Phil Gallie:** In that case, Helen Eadie's point is guarded by that. The Scottish Executive is there to look after the representations made by MSPs and others. It is not the quango that will rubber stamp the decision.

**The Convener:** No. The health board's authority comes from the ministers who appoint the board members. The health board is accountable to the Parliament, through ministers.

**Helen Eadie:** I support the principle that the committee should not interfere with the executive decisions of local authorities—the principle is sound. However, we must question a little more in relation to the quangos that have proliferated across Scotland. They should be more under the control of the Scottish Parliament.

**The Convener:** Is it agreed that we refer the petition to the Health and Community Care Committee?

**Members indicated agreement.**

### **Scottish Ambulance Service (PE381)**

**The Convener:** I have a couple of other points about current petitions. Members may recall PE381, which the committee dealt with last summer, on the Scottish Ambulance Service's proposal to modernise its service delivery arrangements. The petition referred specifically to the service in the Aberdeen area. We passed the petition to the Health and Community Care Committee and although the progress of the petition was recently concluded, the Minister for Health and Community Care has sent a letter to me and to the convener of the Health and Community Care Committee providing details of the approved ambulance service proposals. Copies of that letter are available from the clerks.

### **Scottish Agricultural College (Auchincruive) (PE480)**

**The Convener:** Recently, we dealt with PE480, about the proposed closure of the Scottish Agricultural College at Auchincruive, which we agreed to refer to the Rural Development Committee. Given the urgency of the case, we also sought responses from the college and from Ross Finnie, with a view to passing the responses to the Rural Development Committee. I am pleased to see that prompt responses have been received. The clerks have passed them to the Rural Development Committee. Any member who is interested in seeing those letters can obtain a copy from the clerks.



## Inadmissible Petitions

### Victoria Hospital Kirkcaldy (IP23)

**The Convener:** We move on to the next item—

**Dr Ewing:** Convener, I have to go, but I agree with all the recommendations.

**The Convener:** That is excellent.

Members will see that there are two petitions under this heading. The first is petition IP23, which was lodged by Mr James A Mackie. It calls for the Scottish Parliament to instigate an investigation of the fire safety precautions that were put in place at the Victoria hospital, Kirkcaldy. Petition IP23 is inadmissible on the ground that the Parliament cannot interfere in an operational matter. I should point out that another petition on the issue, which is admissible, is to be lodged this week. It will appear on a future agenda.

Are we agreed that petition IP23 is inadmissible?

**Phil Gallie:** I accept that the matter is operational and, on that basis, it is fine to treat the petition as inadmissible. I had cause last week to visit the Victoria. The very nature of the build of the hospital raises some doubts in my mind about how to deal with a fire there, but the experts have given it a fire certificate and procedures are in place. Would it be reasonable to suggest to Mr Mackie that he make contact with the Victoria to find out what procedures are in place? I am sure that, if he were to do so, he would receive the assurances that he seeks.

**Helen Eadie:** The convener rightly says that the issue will be addressed in a more general way in the petition that is to be lodged this week. I have an interest in that petition, as people from my constituency are leading the delegation to lodge it. Mr Mackie should be reassured that the other petition addresses the more general principle that he raised.

One thing that has not made the press headlines as yet, but which I am sure will do so in due course, is what happened after Guy's and St Thomas' hospital in London was rebuilt in the way that it is proposed to rebuild the Victoria hospital. When Guy's hospital was rebuilt, it could not get a fire certificate to house patients above the sixth floor.

Mr Mackie is rightly concerned about the Victoria hospital, as the hospital proposes to put acute patients above the sixth floor. If it was not possible to do that at Guy's in London, I cannot see how it will be possible to do that in Scotland. That more general issue will be addressed by the petition that is to be lodged this week by people from my constituency of Dunfermline East.

**The Convener:** When we inform Mr Mackie that his petition IP23 is inadmissible, he will be told that another petition on the same issue is to be considered by the Public Petitions Committee. He will be kept fully informed of the progress of that petition. Are we agreed?

**Phil Gallie:** I agree. Given that Mr Mackie has taken the trouble to lodge the petition, I was trying to be helpful.

*Members indicated agreement.*

### State Hospital Carstairs (IP24)

**The Convener:** The next inadmissible petition, IP24 on the state hospital at Carstairs, was lodged by Mr James Kelly. It calls on the Scottish Parliament to investigate the infringement of patients' human rights by the compulsory installation of prison-style barred windows at the state hospital in Carstairs. In a subsequent letter, the petitioner highlighted his concerns as to the treatment and care that was provided by hospital staff to patients who signed the petition. He asks us also to examine that.

The patients' advocacy service at Carstairs has written to the Committee on the petitioner's behalf. The letter highlights concerns that a decision by the clinical team to increase Mr Kelly's medication, contrary to the opinion of his responsible medical officer, is related to the submission of his petition.

The clerks also received a copy of a letter dated 21 March, addressed to Mr Kelly, in which the state hospital confirmed that the replacement of the windows was designed to protect the safety of staff, patients and the general public. The hospital also acknowledged the issues that Mr Kelly had raised regarding ventilation. It is currently examining ways in which to improve the ventilation panels on the new windows to improve air quality in the rooms.

The petitioner is asking the Parliament to intervene in an operational matter that is the responsibility of the state hospital. That is something that the Parliament is unable to do, as it cannot interfere in or overturn the executive decisions of individual hospitals in Scotland.

I recommend that the Committee agrees that the petition is inadmissible. However, we may wish to advise the petitioner to pursue the matters that he has raised with the patients' advocacy service.

*Members indicated agreement.*

**The Convener:** As there is no convener's report, that concludes the business for this morning. I thank everyone for staying with us for so long.

*Meeting closed at 12:40.*



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